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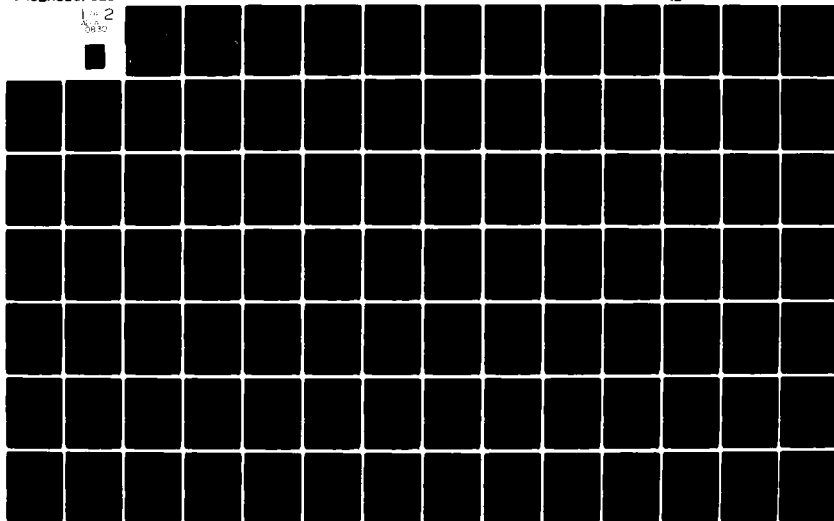
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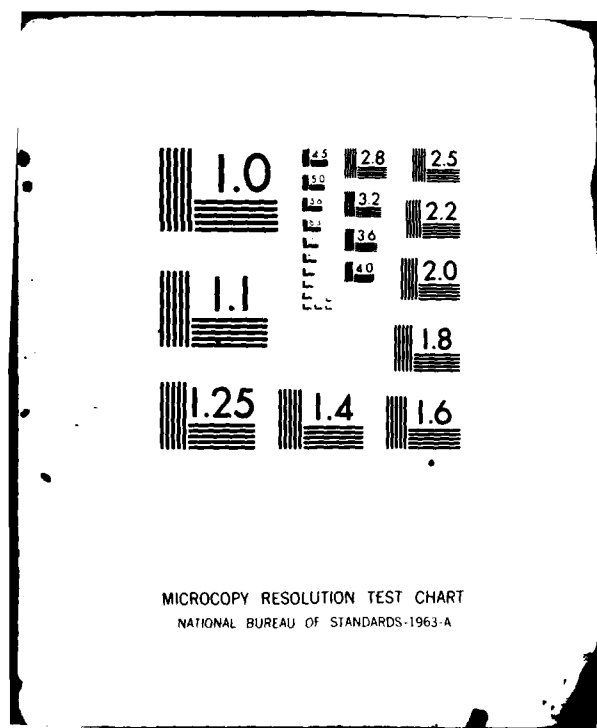
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THE ALLIES AND THE WEST GERMAN PARLIAMENTARY COUNCIL:

THE CRISIS OF APRIL 1949

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Final Report, 8 September 1981

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A thesis submitted to the University of North Carolina at Chapel Hill in partial fulfillment of the requirements for the degree of Master of Arts in the Department of History.

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The thesis examines the impact of personalities, issues, and events on the drafting of the West German Basic Law between July 1948 and May 1949. Special emphasis is given to the development and resolution of the crisis which erupted in the Council in April 1949, almost forcing its dissolution. Military and diplomatic records in the National Archives of the United States provided the primary sources of evidence, supplemented by British, American, and German memoirs and secondary works. The study provides new insights into the resolution of the April crisis, viewed from both the Allied and German perspective.		

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THE ALLIES AND THE WEST GERMAN PARLIAMENTARY COUNCIL:  
THE CRISIS OF APRIL 1949

by

Phillip J. Linn

A Thesis submitted to the faculty of the  
University of North Carolina in partial  
fulfillment of the requirements for the  
degree of Master of Arts in the Department  
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Chapel Hill  
1981

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PHILLIP J. LINN. The Allies and the West German Parliamentary Council: The Crisis of April 1949 (Under the direction of DR. GERHARD L. WEINBERG).

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## CHAPTER I

### Introduction

On September 1, 1948, against the backdrop of the Berlin Blockade and the widening rift between East and West, sixty-five German delegates convened in Bonn to draft a provisional constitution for the three West German zones of occupation. For both the Western Allies and the Germans, the event held tremendous significance. The Allies were convinced that only through the establishment of a West German state could their plan for the recovery of Western Europe be implemented. For the Germans, the constitutional convention represented an opportunity to end the uneven relationship with the Allies and to regain a large measure of their lost sovereignty. Somewhat optimistically, the delegates hoped to complete a constitution (or Basic Law, as they preferred to call it) in about three months. Elections for a West German government were expected in early 1949.<sup>1</sup> In fact, the constitutional proceedings were to extend over the next eight months, marked by bitter disputes between the German political parties and by intermittent

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<sup>1</sup>"Meeting in Bonn," New York Times, Sept. 5, 1948, Sec. IV, p. 1.

intervention by the occupying powers. The party struggles were overcome only with the greatest difficulty; the intervention by the Allies almost caused the entire process to collapse.

Deliberations in the Parliamentary Council, as the convention was referred to, progressed slowly during the final months of 1948, as the German parties endeavored to define their stand on constitutional issues. With the coming of the new year, however, the delegates accelerated their pace. In mid-February, they presented the three western Military Governors with a draft version of the Basic Law which reflected a substantial compromise between the various parties. The Military Governors responded on March 2 with a memorandum suggesting additional changes to several of the draft articles. Throughout March, a special interparty committee from the Parliamentary Council struggled to produce a counterproposal acceptable to both fellow Germans and to the Allies. By the end of the month, however, an impasse had been reached which seemed to defy all efforts at resolution.

At the beginning of April, the foreign ministers of Great Britain, France, and the United States met in Washington, D.C., to sign the Atlantic Treaty. Over a period of several days, they were able to conclude far-reaching agreements concerning the fate of the western zones of Germany. These agreements ultimately enabled the

parliamentary deadlock to be broken, but not until Allied and German participants alike almost despaired of achieving a compromise. A conciliatory note from the Foreign Ministers, delivered on April 22, was the critical factor that brought the divergent factions within the Council back to the bargaining table. After two days of intense negotiation, the Germans resolved their most outstanding differences. On April 25, they reached an agreement with the Allies which virtually assured approval of the Basic Law by all parties concerned. On May 8, 1949, the fourth anniversary of the capitulation of the Third Reich, the Basic Law was formally approved in plenary session. The Military Governors approved it on May 12, a date also significant for the lifting of the Berlin Blockade. In quick succession, the legislatures of ten of the eleven West German Länder (Bavaria being the exception), ratified the Basic Law, which was then officially promulgated on May 23. The foundation for the Federal Republic of Germany had been established.

Since that time, many excellent works have been written about the efforts of the Bonn Parliamentarians.<sup>2</sup>

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<sup>2</sup>The major works in English include John Golay's The Founding of the Federal Republic of Germany (Chicago: University of Chicago Press, 1958) and Peter Merkl's The Origin of the West German Republic (New York: Oxford University Press, 1963). John Gimbel, in his The American Occupation of Germany, Politics and the Military (Stanford: Stanford University Press, 1968), devotes a large section to the events in Bonn. Among the works in German are Hans

Nevertheless, the complexity of the proceedings leading to the Basic Law caused one leading German historian, Karl Dietrich Bracher, to lament that "the history of the Parliamentary Council has not yet been written. The part played in the formulation of the Basic Law by the parties, individual politicians, and the three occupying powers requires more precise definition than existing commentaries and accounts have yet given us."<sup>3</sup> It is doubtful that such a definitive work will be possible until the opening of the French diplomatic archives of the occupation period. However, the British, American, and West German archives are accessible to the scholar for this period.<sup>4</sup> Moreover,

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Peter Schwarz' Vom Reich zur Bundesrepublik: Deutschland im Widerstreit der aussenpolitischen Konzeptionen in den Jahren der Besatzungsherrschaft 1945-1949 (Berlin: Hermann Luchterhand Verlag, GmbH, 1966), Werner Sörgel's Konsensus und Interessen, Eine Studie zur Entstehung des Grundgesetzes für die Bundesrepublik Deutschland (Stuttgart: Ernst Klett Verlag, 1969), and Volker Otto's Das Staatsverständnis des Parlamentarischen Rates, Ein Beitrag zur Entstehungsgeschichte des Grundgesetzes für die Bundesrepublik Deutschland (Düsseldorf: Rheinisch-Bergische Druckerei-und Verlagsgesellschaft mbH, 1971).

<sup>3</sup>Karl Dietrich Bracher, The German Dilemma, The Throes of Political Emancipation, trans. Richard Barry (London: Weidenfeld and Nicolson, 1974), p. 157.

<sup>4</sup>The British archives are now open up to 1950. Most American diplomatic records are available through 1955 in the National Archives in Washington, D.C. Unpublished records of the Parliamentary Council are located in the Bundestag archives in Bonn.



many of the transcripts of the Parliamentary Council proceedings have been published, and numerous American diplomatic and military documents have also appeared in print.<sup>5</sup>

Memoirs and biographies of some of the major German and Allied participants in these events add further to our knowledge of the Bonn deliberations.<sup>6</sup> Taken together, the material allows for a fairly comprehensive account of the period. This thesis, based on a portion of this material, is one such, small attempt.

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<sup>5</sup>The transcripts of the plenary sessions of the Parliamentary Council appear in Parlamentarischer Rat, Stenographischer Bericht über die 12 Sitzungen der Vollversammlung (Bonn: Bonner Universitäts-Buchdruckerei, 1949). The Main Committee transcripts are contained in Parlamentarischer Rat, Verhandlungen der Hauptausschusses (Bonn: Bonner Universitäts-Buchdruckerei, 1949). A selection of U.S. diplomatic records is contained in the State Department series Foreign Relations of the United States for 1948 and 1949, Volumes II and III, respectively (Washington, D.C.: United States Government Printing Office, 1973, 1974); key military correspondence appear in Jean Edward Smith, ed., The Papers of General Lucius D. Clay, Germany 1945-1949, 2 vols. (Bloomington, Ind.: University of Indiana Press, 1974).

<sup>6</sup>Of the important American participants, General Clay wrote of his experiences in Decision in Germany (Garden City, N.Y.: Doubleday and Company, Inc., 1950); Robert Murphy, his political adviser, wrote his memoirs in Diplomat Among Warriors (Garden City, N.Y.: Doubleday and Company, Inc., 1964); George Kennan's account of the period is contained in Memoirs, 1925-1950 (Boston: Little, Brown, 1967). Of the Germans, Konrad Adenauer, President of the Parliamentary Council, wrote his Memoirs 1945-1953, trans. Beate Ruhm von Oppen (Chicago: Henry Regnery Company, 1966); Paul Weymar wrote one of many biographies on Adenauer entitled Konrad Adenauer, The Authorized Biography, trans. Peter de Mendelsohn (London: Andre Deutsch, 1957). The memoirs of Carlo Schmid, leader of the Social Democratic Party faction in the Parliamentary Council, were recently published:

To narrow the scope of my thesis, I intend to focus primarily on the month of April 1949, when the Basic Law proceedings nearly foundered but ultimately were assured of success. Up to now, few scholarly studies have examined in depth the issues, personalities, and events which led to the crisis of April, and none have adequately explained how these factors interacted to allow the crisis to be successfully resolved.<sup>7</sup> Such a project requires a detailed examination of these essential factors, not just at the level of the German constitutional delegates and party leaders but also, as Karl Bracher has suggested, at the Allied level, including both the military occupation authorities and the Foreign Offices of the three Western Allies. At each level, the major participants interacted among themselves as well as with the participants of the

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Erinnerungen (Munich: Scherz Verlag, 1979). A short biography of Theodor Heuss, the Free Democratic Party leader, is Karl Dietrich Bracher's Theodor Heuss und die Wiederbegründung der Demokratie in Deutschland (Tübingen: Rainer Wunderlich Verlag, 1965). Several biographies have been written about Kurt Schumacher, the overall leader of the Social Democratic Party at the time of the Parliamentary Council. Chief among them are Arno Scholz, ed., Turmwächter der Demokratie, 3 vols. (Berlin: Arani-Verlags GmbH, 1953), and Lewis Edinger's Kurt Schumacher: A Study in Personality and Political Behavior (Stanford: Stanford University Press, 1965). For a more complete listing, see the bibliography.

<sup>7</sup>A recent article by Hans-Jurgen Grabbe, "Die Deutsche-Alliierte Kontroverse um den Grundgesetzentwurf im Frühjahr 1949," Vierteljahrshefte für Zeitgeschichte, 26 (July 1978), pp. 394-418, has been the best attempt so far.

other levels, and decisions reached or actions taken at one level necessarily influenced those at the other levels. Unless the events of April 1949 are viewed within this framework, they cannot be fully understood.

As a result of such an examination, four areas emerge which tend to offer a different perspective than given by earlier accounts of the period. First, no account dealing specifically with the Basic Law has shown how the proceedings were affected by the Berlin Blockade. Second, the British support for the Germany Social Democratic Party has thus far only been alluded to in the memoirs and correspondence of General Clay, the American military governor. It is now possible for a more accurate appraisal of British actions in this regard. Third, General Clay's influence on the Parliamentary Council has been acknowledged by all those writing on the subject. Documentation now available enables yet a more detailed examination of his role. Finally, a new interpretation can be offered to the factors which led the German parties, so hopelessly deadlocked only five days before a final agreement was reached, to end their differences and arrange a workable compromise.

In order to gain an adequate "feel" for the events which had such a great impact in April 1949, it is instructive to describe briefly the international and domestic situation which spawned the Bonn Parliamentary Council and to trace the Council's progress up to that time.

## I. International Background

The establishment of a West German State in 1949 was made possible by the consistent failure of the four occupation powers to reach agreement on a joint policy for Germany. At the Yalta Conference in February 1945, Roosevelt, Churchill, and Stalin (France was excluded) discussed the future of Germany in only the most general of terms. Each major power would occupy a separate zone of Germany; France was invited to participate if she so desired. The fundamental objectives of demilitarization, disarmament, denazification, reeducation, and the trial of war criminals were announced, as well as the intention to force Germany to provide compensation for the damage it had caused during the war. Regarding the administration of the occupation zones, the three leaders agreed to establish a central control commission consisting of the supreme commanders of the three powers, with its headquarters in Berlin.<sup>8</sup>

After the German surrender on May 8, 1945, it soon became apparent that the general language of the Yalta Conference was grossly inadequate to handle the myriad of problems brought about by the war and occupation. In the

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<sup>8</sup>For the official communique and an extract of the conference protocol, see Beate Ruhm von Oppen, ed., Documents on Germany under Occupation 1945-1954 (London: Oxford University Press, 1955), pp. 4-8.

British and American zones especially, it was clear that some form of interzonal economic cooperation was going to be necessary since neither the predominantly industrial British zone nor the agricultural American zone could attain self-sufficiency without such cooperation. The only alternative was for the two countries to inject massive amounts of their own capital into their zones to finance the imports needed to feed the Germans and prime their industry.<sup>9</sup> For both, interzonal economic cooperation was far more preferable.

At Potsdam in July 1945, the leaders of the Big Three met once again to resolve the most pressing occupation issues (and again, France was not invited). The principles of Yalta were reiterated, but the leaders agreed to important additions in the areas of the economy and the political reconstruction of Germany. They recognized that Germany should be treated as a single economic unit and that common policies should be established in the major economic areas. They agreed to the method of reparations payments, with the proviso that the Germans should be left enough resources to enable them to "subsist without external assistance." The Soviet Union was to draw most of its

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<sup>9</sup>For the British situation, see M.A. Fitzsimmons, The Foreign Policy of the British Labour Government 1945-1951 (Notre Dame: University of Notre Dame Press, 1953), pp. 40-45. On the American predicament, see Gimbel, The American Occupation of Germany, p. 13.

reparations from its own zone; only 25% was to be drawn from the western zones, and only from industries nonessential to Germany's peace economy. Political reconstruction was to be restored on democratic principles as soon as practicable, and all democratic political parties were to be allowed and encouraged. Elected bodies up to the Land (state) level were foreseen, but it was specified that no central German government was yet to be established. Nevertheless, centralized German agencies in finance, transport, communications, foreign trade, and industry were to be formed under the supervision of the Allied Control Council.<sup>10</sup>

Whether the Soviets would have initially cooperated in the formation of such centralized organs can only be conjectured. In fact, it was the French who were initially the most vocal opponents of such agencies. Resentful at France's exclusion from Yalta and Potsdam, Charles de Gaulle announced that France would not be bound by their provisions. In return for the establishment of any centralized German agencies, de Gaulle was determined to extract from the Allies ironclad guarantees for France's future security. These guarantees eventually embodied six major demands: 1) demilitarization and detachment of the Rhineland;

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<sup>10</sup>For extracts from the report of the Potsdam Conference, see von Oppen, Documents on Germany, pp. 40-50.

2) internationalization of the Ruhr; 3) attachment of the Saar to the French economy; 4) exploitation of the German economy; 5) overall demilitarization and denazification; and 6) reeducation of Germany toward democratic ideals.<sup>11</sup>

French obstructionism was a convenient foil for the Soviets, whose actions in their own zone were viewed with increasing suspicion in the West. Very little of a constructive nature for Germany as a whole could be accomplished in the Allied Control Council where unanimity was required. The four zones were forced to go their separate ways, a fact that became increasingly frustrating for the American zone commander, General Clay. In spring 1946, in an attempt to resolve the deadlock over centralized agencies, Clay decided to force the issue. He ordered dismantling halted in the American zone until the Potsdam Agreement could be implemented in its entirety. Simultaneously, he directed that centralized agencies be created in the American zone, with an eye toward combining the British zone with his own if the French and Russians continued their obstructionist tactics.<sup>12</sup>

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<sup>11</sup>Frank Roy Willis, The French in Germany, 1945-1949 (Stanford: Stanford University Press, 1962), p. 44.

<sup>12</sup>See Gimbel, The American Occupation of Germany, pp. 57-61. Many Cold War historians interpret Clay's decision to halt dismantling as one of the opening salvos in the Cold War. Clay himself, in his account of the occupation, Decision in Germany (Garden City, N.Y.: Doubleday and Company, Inc., 1950), pp. 120-124, seems to give credence to this view by stating that the reparations

The British, in much worse financial straits than the United States, were amenable to the idea of a zonal fusion. Negotiations were initiated between the two powers during the summer and autumn and led to a formal agreement on December 2, 1945, for the fusion of the two zones. The main objective of the agreement was to make the bizone area self-sufficient by 1949. Since the United States was eventually to assume much of the financial responsibility for the bizonal area, the British were forced to follow American initiatives there to a large degree. This, in turn, necessitated some reorientation of British policy in Germany. For example, nationalization of industry in the British zone, a policy very dear to the hearts of the British Labour government, was opposed by the Americans.

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issue was "our first break with Soviet policy in Germany." Gimbel contends that the move was aimed as much at the French as it was at the Soviets, and that Clay hoped that the action would force the issue to be resolved at governmental level. A more recent analysis is contained in John L. Gaddis, The United States and the Origin of the Cold War, 1941-1947 (New York: Columbia University Press, 1972), pp. 329-30. According to Gaddis, by spring 1946 the Americans viewed their difficulties with France in the context of worsening relations with Russia. They felt the Soviets were secretly supporting the French recalcitrance, because it allowed them to appear to support German unity while exploiting their own zone as they saw fit. Clay's move was therefore a means of testing Soviet commitment to German economic unity. In light of documentation now available, Gaddis' view seems to be correct.



The British deferred to their wishes, eventually choosing to let the Germans decide for themselves once their government was established.<sup>13</sup>

Nineteen forty-seven brought about a major revamping of western Allied policy vis-a-vis the Soviet Union. In the United States, the Soviet Union was increasingly perceived as a serious security threat to Europe, and thus, indirectly, to itself. Combined with a recognition of Western Europe's desperate financial and economic situation, exacerbated by the harsh winter of 1946-47, these perceptions led U.S. policy makers to commit the nation to the economic rehabilitation of Western Europe. The announcement of the Truman Doctrine in March was followed by that of the Marshall Plan in June.<sup>14</sup>

The further failure to reach agreement on Germany during the two meetings of the Council of Foreign Ministers in 1947 were also factors in the basic reorientation, especially in France. In Moscow in March and April, and

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<sup>13</sup>Fitzsimmons, Foreign Policy of the British Labour Government, pp. 47-48. See also D.C. Watt, Britain Looks to Germany. British Opinion and Policy towards Germany since 1945 (London: Oswald Wolff, 1965), pp. 53-67.

<sup>14</sup>For two recent influential studies on how U.S. policy was transformed, see Gaddis, The United States and the Origins of the Cold War, 1941-47, and Daniel Yergin, Shattered Peace, The Origins of the Cold War and the National Security State (Boston: Houghton Mifflin Company, 1977).

again in London in November and December, the Russians had emphatically rejected the basic French formula for Germany. It became obvious that if anything was to be salvaged from its original program, France would have to align itself with the United States and Great Britain.<sup>15</sup> Even then, it did so reluctantly and was only gradually persuaded to support the establishment of a West German state.

For the British, 1947 brought more a shift in public opinion than in actual policy. Britain had long considered the economic recovery of Germany and the rest of the continent as an essential prerequisite for its own economic well being. However, to join with the United States in rectifying the situation was opposed by many Labourites, who were suspicious of U.S. economic motives. The Marshall Plan in particular was initially viewed as some kind of devious capitalist plot to exploit Europe economically as well as politically. However, when it became clear in late 1947 and early 1948 that no political conditions were attached, these doubts were largely dispelled, and even the more left-wing Labourites began actively to support the government's close cooperation with the United States in Europe.<sup>16</sup>

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<sup>15</sup>Willis, The French in Germany, pp. 46-50.

<sup>16</sup>Michael R. Gordon, Conflict and Consensus in Labour's Foreign Policy, 1914-1965 (Stanford: Stanford University Press, 1969), pp. 164-72.

With the failure of the London Council of Foreign Ministers, the Western Allies abandoned, at least for the near future, any further plans for a unified German state. Equally significant, Secretary of State Marshall and Foreign Minister Bevin agreed to call a tripartite government level conference to discuss with France future German policy. The discussions, which began on February 23, 1948, were expanded to include the Benelux countries. The first session lasted until March 5, and established the parameters of the decisive second session, which ran from April 20 to June 2. The French remained extremely reluctant to establish a West German state. But the interlude between the sessions changed their minds. In late February, the Soviets had installed a Soviet-style regime in Czechoslovakia. On March 20, Marshall Sokolovsky, the Soviet Military Governor, walked out of the Allied Control Council in Berlin, a move that was followed shortly by the first steps to initiate the Berlin Blockade. On the Allied side, the Treaty of Brussels, a mutual defense system which was the forerunner of NATO, was signed by Britain, France, and the Benelux countries in mid-March. On April 3, the Marshall Plan was signed by Truman, with a projected sum of almost one billion dollars to be funneled into France over the next twelve months. As a consequence of these events, French acquiescence to the Anglo-Saxon plan was made more justifiable on the domestic front, and the

perception grew that the Soviets posed a more immediate threat to the French than did the Germans.

By the end of the second session, agreement had been reached on several important issues, including international control of the Ruhr, territorial adjustments, measures toward European economic integration, and establishment of a Military Security Board to supervise and insure German disarmament and demilitarization. Most important, the six powers agreed on a plan for the formation of a West German State.<sup>17</sup> The guidelines for such a state were extremely vague, directing that a government of federal type was to be established which provided adequate authority, guaranteed the independence of the participating states, and protected individual rights.

The general tone of the directive was a reflection not of the Allied desire to allow the Germans flexibility in drafting their constitution, but of the Allied inability to agree on what form the new government should take. Understandably, each Ally desired a governmental structure which would promote and protect its own interests. For the security-conscious French, this meant a federal structure with a weak central government, having no powers of taxation or effective police jurisdiction. They also desired a

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<sup>17</sup>For the text of the London Agreements, see Foreign Relations of the United States (Henceforth, FRUS), 1948, Vol. II, pp. 309-313.

bicameral legislature where both houses would consist of representatives of the states, elected by the individual state legislatures. The British and Americans were both in favor of granting the central government adequate authority to implement its policies, but the British were inclined to favor a wider range of powers for the central government than the Americans. This was no doubt a reflection of the British Labour government's desire to give the future German government powers similar to its own, which would allow nationalization of industry and an overall economic development complementary to its own. In the area of a national legislature, the British were content to support the American concept of a bicameral body along the lines of the latter's Senate and House of Representatives. Both were agreed that the central government should have limited and clearly defined police powers.<sup>18</sup>

Substantial concessions had been made to the French to secure their approval, including tacit recognition of the economic fusion of the Saar with France. To many Frenchmen, however, the reestablishment of the German

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<sup>18</sup>Clay, Decision in Germany, pp. 402-03. It is interesting to note that France, the most centralized state in Western Europe, supported a strong federal approach in Germany. The British, who advocated the reestablishment of the monarchy in Italy, did not push the idea for Germany. For the French, security was obviously the motive. In the case of the British, the fact that the Italians had not abolished the institution while the Germans had probably influenced their position.

state, regardless of the safeguards, represented a sell-out of national interests. In the final vote in the French National Assembly, the London Agreements passed with a bare eight vote majority, boding ill for French cooperation in the following months.<sup>19</sup> For the time being, however, the vote enabled the plans to go forward for informing the Germans of the results of the London Six-Power Conference. The Military Governors issued an invitation to the Minister Presidents of the eleven west zone Länder to meet with them in Frankfurt on July 1 to receive instructions on the convening of a constituent assembly.

## II. Domestic Background

By mid-1948 the political system in the western zones of Germany had advanced to the limits allowed by the Potsdam Agreement, in some cases even exceeding those limits. Each of the eleven western Länder had a popularly elected state legislature headed by a Minister President, usually the majority party leader or his chosen representative. For the Länder of the Bizone a higher quasi-political organization had been established known as the German Bizonal Economic Administration. The purpose of the organization was largely economic in nature, but with definite

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<sup>19</sup>Willis, The French in Germany, p. 60.

political overtones.<sup>20</sup> Such progress had not been achieved overnight; it was the product of a painstaking and calculated effort on the part of the Allies to inculcate democratic ideals among the German populace.

The Americans had proceeded the most rapidly towards the goal of democratization, and were the first to hold elections. The military government had initially reestablished local, county, city and regional administrations by appointing the key German officials. Land administrations followed in September 1945, once the boundaries of the new Länder had been determined. Finally, in order to coordinate the actions of the Länder and to promote the experience of interstate cooperation, a Council of States (Länderrat) was formed in October, consisting of the Minister Presidents of the Länder and supervised by occupation authorities. By November, authority was granted for political parties to

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<sup>20</sup>As noted earlier, the Potsdam Agreement had forbidden the creation of political structures beyond Land-level. The Bizonal Economic Administration was an attempt to get around this restriction. It was made up of an Economic Council consisting of delegates elected by the Länder parliaments, and a Council of States made up of representatives appointed by the state governments. Together, they coordinated economic matters between the Bizone Länder, but playing politics was difficult to avoid. See Gimbel, The American Occupation of Germany, pp. 186-93.

form up to Land level. This accomplished, General Clay next pushed for elections in order to replace the appointed officials with elected ones. Local elections were held in January 1946, followed by elections for district councils in April, and city councils in May. In the next few months, constituent assemblies were elected and constitutions for each Land drafted and approved; Land elections took place in November and December 1946.<sup>21</sup>

As in the American zone, the British had initially appointed German administrations up to Land level; by the end of 1945 a Zonal Advisory Council was established with much the same purpose of the Länderrat in the American zone. Local elections were not held until September 1946, however, and Land elections not until April 1947. Even then, the elections were more in response to the progress in the American and Soviet zones than to any great desire on the part of the British to do so.<sup>22</sup> Because of Britain's constitutional tradition, the drafting of written constitutions was not

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<sup>21</sup>Clay, Decision in Germany, pp. 84-90.

<sup>22</sup>Raymond Ebsworth, Restoring Democracy in Germany: The British Contribution (London: Stevens and Sons, Ltd, 1960), p. 50. The Soviets had conducted Land level elections in October 1946. The results were so disappointing for the Soviet-sponsored Socialist Unity Party that no further free elections were ever held. See Elections and Political Parties in Germany, 1945-1952 (Office of the U.S. High Commissioner for Germany, 1952), pp. 11-12.



given the priority it received in the other western zones; none were complete by the time of the Land elections. The British were also more cautious in sanctioning the formation of political parties. Initially, they were allowed only at the local level, and not permitted to expand to a district or higher level until their support was demonstrated in all the localities of the particular district or region. Not until 1946 were parties allowed at Land level.<sup>23</sup>

Progress in the French zone toward democratically elected bodies was delayed by the redrawing of Länder boundaries and the confusion resulting from France's original intention to annex some German territory. Appointed officials administered occupation policy until elections were held. Political parties were permitted on a Land-wide basis by the end of 1945. Local elections were eventually scheduled for August 1946, city and district for October. Based on these results, consultative assemblies were selected in each Land to draft its respective constitution. In May 1947, elections were held to approve the constitutions and elect the Land governments.<sup>24</sup>

Despite the various obstacles to the forming of political parties in the western zones, three dominant parties had

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<sup>23</sup>Watt, Britain Looks to Germany, pp. 72-76.

<sup>24</sup>Willis, The French in Germany, pp. 190-208.

emerged more or less by the summer of 1948. These were the Social Democratic Party of Germany (SPD), the Christian Democratic Union (CDU) and its Bavarian off-shoot, the Christian Social Union (CSU), and the Free Democratic Party (FDP). Of these, the SPD was the only one to have retained its prewar identity and name intact, and was the best organized and most disciplined. The Social Democrats strongly supported a program of social reform rather than the doctrinaire Marxism of the Communists. Even so, this program envisioned a centrally planned economy involving an ambitious and expensive plan for nationalization of major industries.<sup>25</sup> Since these views coincided to a great extent with those of the British Labour government, the SPD generally enjoyed its sympathy, if not always its open support.<sup>26</sup>

The leader of the SPD, Kurt Schumacher, had gained tremendous stature for his opposition to, and subsequent imprisonment by, the Nazis. He had spent nearly ten years in Nazi concentration camps, an experience which had shattered his health (he was forced to miss much of the Parliamentary Council proceedings when poor circulation necessitated the amputation of his left leg) but reinforced

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<sup>25</sup>Ebsworth, Restoring Democracy in Germany, p. 19.

<sup>26</sup>Elections and Political Parties in Germany, 1945-1952, p. 4.

his determination to lead the SPD and Germany out of its post-war blight.<sup>27</sup>

Although committed to a unified Germany, Schumacher was strongly anti-communist and had refused to join the western zone SPD with that of the Soviet zone in 1945. Despite the Allied restriction against parties organizing beyond state boundaries, he had consolidated his leadership in the party throughout the western zones by the end of 1946. When the Minister Presidents met in Frankfurt in July 1948, five of the eleven were members of the SPD and came from predominantly SPD Länder (Christian Stock from Hesse, Wilhelm Kaisen from Bremen, Hinrich Kopf from Lower Saxony, Max Brauer from Hamburg, and Hermann Lüdemann from Schleswig-Holstein).

The Christian Democratic Union, tracing its ancestry to the Catholic Center Party of Imperial and Weimar Germany, was more broadly based than its predecessor but more loosely organized than the SPD. When the Allies had first permitted political parties, numerous organizations sprang up under

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<sup>27</sup>Schumacher's complex personality is analyzed in Edinger, Kurt Schumacher, pp. 259-307. Edinger suggests that Schumacher's drive for leadership was a result of an obsessive-compulsive personality. While not psychotic, he was nevertheless unable to deal effectively with those who disagreed with him, including influential members of his own party. Aloof and difficult to work with, he did not always enjoy the rapport with the British that his party did. See *ibid.*, p. 178, and Schwarz, Vom Reich zur Bundesrepublik, p. 536.

the broad heading of "christian" parties, all with the common belief in and acknowledgement of the human and social values of Christianity. In December 1945, the term Christian Democratic Union was adopted by most of these groups, and two centers of power developed--one under the leadership of Konrad Adenauer in the Rhineland, the other under Jakob Kaiser in Berlin. Adenauer gradually extended and consolidated his leadership, first in the British zone, then elsewhere. Shortly before the meeting in Frankfurt between the Military Governors and the Minister Presidents, he had assumed the chairmanship of the Council of Land Chairman of the CDU, from which he had conveniently excluded his closest party rivals.<sup>28</sup> As nominal leader of the CDU, his views on the concept and role of a new German state were to have a decisive influence on the course of the constitutional proceedings. He was especially interested in the rapid establishment of a West German state with close ties to Western Europe and the United States. The form of government was not as important to him as its actual establishment, for only then could it begin to end its

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<sup>28</sup> Arnold J. Heidenheimer, Adenauer and the CDU: The Rise of the Leader and the Integration of the Party (The Hague: Martinus Nijhoff, 1960), pp. 30-161.

isolation and regain its economic and political independence.<sup>29</sup>

At 72, Adenauer had already enjoyed a full political career, primarily as mayor of Cologne until 1933. Dismissed by the Nazis, he spent the war years in the seclusion of his home in Rhöndorf. He had been reappointed as Cologne's mayor by the Americans shortly after the war, but was again dismissed in October 1945 by the British, who took control of the zone from the Americans.<sup>30</sup> Cologne's loss turned out to be Germany's gain, as Adenauer was able to devote his considerable energies full time to party affairs.

In Bavaria, the Christian Social Union emerged, espousing many of the same objectives as the CDU, but tending to be much more federalistic than their northern brethern. Bavarian pride and tradition dictated that its influence in any future German state be assured, and the CSU was careful to maintain its separate identity and beliefs. The actions of the two parties were coordinated to a certain

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<sup>29</sup>Rudolf Morsey, "Die Rolle Konrad Adenauers im Parlamentarischen Rat," Vierteljahrshefte für Zeitgeschichte 18 (January 1970), pp. 84-85. Adenauer was practical enough to realize that French cooperation was vital for the realization of such a goal, and was willing to make substantial concessions in order to allay their fear of a reborn Reich.

<sup>30</sup>Whether there were any political motives behind his dismissal is still debatable. Ostensibly, as Weymar relates, the local British commander fired him for obstructionism and noncooperation when he found the streets of Cologne not cleared of rubble to his satisfaction. Konrad Adenauer, The Authorized Biography, pp. 178-183.

extent through the establishment of an Arbeitsgemeinschaft, a coordinating committee, in 1947. Nevertheless, fundamental differences over federalism continued to plague the CDU and CSU throughout the constitutional proceedings.<sup>31</sup>

Whereas the Social Democrats derived a sympathetic consideration from the British, it must also be said that the CDU/CSU drew a certain amount of support from the Americans and the French, although not to the same degree.<sup>32</sup> At the Frankfurt meeting on July 1, five of the Minister-Presidents were CDU-CSU members, representing CDU/CSU dominated electorates (Hans Ehard of Bavaria, Karl Arnold from North Rhine-Westphalia, Peter Altmaier of the Rhineland-Palatinate, Leo Wohleb of Baden, and Lorenz Bock of Württemberg-Hohenzollern).

The third major party was the Free Democratic Party, whose various factions were not actually united under that title until the end of 1948. Consisting mainly of Protestant industrialists, professionals, and businessmen in the mold of the old National Liberal and Progressive Parties, the party expressed strong support for free enterprise and separation of church and state, and strong opposition to

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<sup>31</sup>Heidenheimer, Adenauer and the CDU, pp. 84-91, 97-102.

<sup>32</sup>Drew Middleton, The Struggle for Germany (Indianapolis: The Bobbs-Merrill Company, Inc., 1949), p. 215.

the particularist tendencies of the CSU.<sup>33</sup> When the party was officially constituted in December 1948, Theodore Heuss was elected its first chairman. An accomplished orator, Heuss had pursued a multi-faceted career as journalist, politician, and academician during the interwar years, and had been a charter member and leader of the Württemberg-Baden faction of the FDP after the war.

Although relatively small in numbers, the FDP nevertheless was able to exert an influence which belied its size, since the two larger parties were nearly equally balanced. In the Bizonal Economic Council, this influence had already been demonstrated, as the FDP had sided with the CDU/CSU on several important issues.<sup>34</sup> On July 1, the Minister President of Württemberg-Baden, Reinhold Maier, was the only FDP member of the eleven.

Several other small parties existed besides the FDP. The most important of these was the German Communist Party (KPD), headed by Rhinelander Max Reimann. Although initially regaining much of its pre-war popularity, the KPD had begun to lose ground with the onset of the Cold War, when it was forced to assume an obstructionist role in the

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<sup>33</sup>Golay, The Founding of the Federal Republic of Germany, p. 150.

<sup>34</sup>Jörg Michael Gutscher, Die Entwicklung der FDP von ihren Anfängen bis 1961 (Meisenheim am Glan: Verlag Anton Hain, 1967), p. 37.

Länder parliaments. By mid-1948, these tactics, accompanied by Soviet moves in Eastern Europe, had served to discredit the party throughout most of the west zone Länder. The Center Party (Z), an off-shoot of the left wing of the old Catholic Center Party, differed from the CDU by confining its enrollment to Catholics and its ideological preferences to the economic policies of the SPD (only in the area of religion and education did its views diverge markedly from those of the SPD). Outside its home territory of North Rhine-Westphalia, its influence was negligible. The only other party to figure directly in the constitutional proceedings was the German Party (DP). With its roots in the old particularist German Hanoverian (Welf) Party, the DP had emerged from the war as the Lower Saxony State Party, even more states-rights oriented than the Bavarian CSU. Its influence was limited primarily to Lower Saxony, but some support was to be found also in Bremen, Hamburg, and Schleswig-Holstein, as well as in Berlin and North Rhine-Westphalia.<sup>35</sup>

After three years of occupation, the Allies had decided to allow the Germans to complete the process of democratization. Elected governments now existed up to the Land level, increasingly sophisticated party organizations had been formed, and each Land had had some experience in drafting its own constitution. Whether or not the Germans

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<sup>35</sup>Elections and Political Parties in Germany, 1945-1952, pp. 6-10.



were capable of establishing the structure for a West German government remained to be seen, but the Allies believed they could afford to wait no longer.

## CHAPTER II

### I. Prelude to the Parliamentary Council

At the meeting in Frankfurt on July 1, 1948, the Military Governors of the western zones presented the Minister Presidents with three documents from the Six Power Conference at London. The first, presented by General Clay, authorized a constituent assembly to draft a democratic constitution. The guidelines for such a constitution had been extracted verbatim from the text of the London Agreement, thereby retaining their initial (and intentional) vagueness.<sup>1</sup> As before, the provision stated that the constitution "will establish for the participating states a governmental structure of federal type which will protect the rights of the participating states, provide adequate central authority, and contain guarantees of individual liberty and freedoms."<sup>2</sup> The constitution would be approved by the Military Governors if it conformed to these basic

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<sup>1</sup>Clay, Decision in Germany, pp. 397-400.

<sup>2</sup>Office of Military Government for Germany (US) Documents on the Creation of the German Federal Constitution (henceforth DCGFC) (Frankfurt am Main: 1950), pp. 43-44.

principles.<sup>3</sup> It would then be submitted to popular referendum in the eleven Länder; a majority in two-thirds of the Länder would be necessary for ratification.

The second document, read by General Brian Robertson, the British Military Governor, concerned the modification of Länder boundaries, outlining the procedures by which such modification could be achieved. General Pierre Koenig, the French Military Governor, presented the third document, which informed the Germans that an Occupation Statute would govern the relationship between the occupying powers and the newly established West German Government. The Allies would initially reserve for themselves powers in certain areas such as foreign relations and foreign trade, and would retain the right to resume full powers in an emergency situation.<sup>4</sup>

In their initial reply to the Military Governors on July 10, the Minister Presidents indicated their qualified acceptance of the responsibilities granted by the London

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<sup>3</sup>Actually, the London Agreement contained a more detailed set of guidelines for use by the Military Governors to determine if the constitution was acceptable. The French had wanted to communicate these guidelines to the Germans during the meeting. Clay and the British Military Governor, General Robertson, had prevailed over their French colleague, General Koenig, to withhold it, reasoning that the Germans might not raise the issues it contained. Eventually, the French demanded its release, and it was delivered to the Germans in the form of the November 22 aide-memoire. Gimbel, The American Occupation of Germany, p. 209.

<sup>4</sup>DCGFC, pp. 44-45.

Documents.<sup>5</sup> However, they recommended substantial changes in the wording of the documents so as to avoid the appearance of creating a permanent West German state. Such a move, they feared, would destroy any hope for the reunification of Germany and might further exacerbate the precarious situation in Berlin, where the airlift had not yet been implemented to its full effect.<sup>6</sup> Undeniably, self-interest also played a role. Few of the Minister Presidents were anxious to assume the responsibility for a permanent separation of the Eastern and Western Zones. The legal ramifications of convening a constituent assembly were also unclear. Carlo Schmid, the SPD justice minister for Württemberg-Hohenzollern, argued persuasively that a state without full sovereignty could not legally draft a constitution in the German sense of the word and instead suggested a provisional charter.<sup>7</sup> With these issues in mind, and operating under the misconception that the Military Governors had some flexibility in altering the documents, they proposed

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<sup>5</sup>For a text of the message, see FRUS, 1948, Vol. II, pp. 385-92.

<sup>6</sup>For a discussion of the influence of Berlin on the Minister Presidents, see Johannes Wagner, ed., Der Parlamentarische Rat 1948-1949, Akten und Protokolle (Boppard am Rhein: Harald Boldt Verlag, 1975), pp. XLV-XLVI.

<sup>7</sup>For Schmid's role, see Schmid, Erinnerungen, pp. 324-330; also Schwarz, Vom Reich zur Bundesrepublik, p. 584.

that a parliamentary council (rather than a constituent assembly) draft a basic law (instead of a constitution).<sup>8</sup> In conjunction with the Occupation Statute, the Basic Law would establish a provisional framework for the administration of the Western Zones until such time as the total unification of Germany could be achieved and a permanent and legal framework constructed. Further, the Minister Presidents recommended that the Basic Law be approved by the Landtag of each state, rather than by popular referendum, for final ratification.

The allies reacted variously to the German response. Clay and Robertson were disappointed, since the German counterproposals would necessitate further intergovernmental negotiations. General Koenig indicated his satisfaction with the reply since the French had only reluctantly agreed to the idea of a German state in the first place.<sup>9</sup> To them, postponement of these plans would be no great misfortune. The British and Americans acted quickly to inform the Germans of the implications of their position, the British concentrating on the party leaders in their zone, the Americans

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<sup>8</sup>Carl J. Friedrich, "Rebuilding the German Constitution," The American Political Science Review, XLIII (June 1949), p. 471.

<sup>9</sup>Gimbel, The American Occupation of Germany, pp. 216-19.

meeting with their zone's Minister Presidents.<sup>10</sup> The Military Governors reiterated their concerns at an official meeting with the Minister Presidents on July 20. During the next several days, the Minister Presidents deliberated further, finally deciding to accept the London Documents with some reservations. In changing their views, they were strongly influenced by Ernst Reuter, the Mayor of Berlin. He managed to allay their fears about Berlin by maintaining that through the establishment of a West German government, Berlin would be saved rather than lost. Although not disagreeing with Schmid's position about the necessity for only a provisional arrangement, he argued that sovereignty could not be gained all at once; it had to be achieved gradually, step by step. Reuter viewed the proposals of the London Documents as the first step in achieving full sovereignty.<sup>11</sup>

The Military Governors and Minister Presidents met for a decisive third conference on July 26, at which time the Germans agreed to the terms of the London Documents. For their part the Military Governors agreed to accept the Germans' terms of "Parliamentary Council" and "Basic Law" in place of "Constituent Assembly" and "Constitution."

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<sup>10</sup>Werner Sörgel, Konsensus und Interessen, pp. 44-45.

<sup>11</sup>Willy Brandt and Richard Löwenthal, Ernst Reuter, Ein Leben für die Freiheit (Munich: Kindler Verlag, 1957), p. 473-75.

Further questions regarding the method of ratification of the Basic Law and the date for submitting changes for Länder boundaries would be referred to government level, but would not delay the proceedings.<sup>12</sup>

The decision having been made to forge ahead, the Minister Presidents hastened to meet the September 1 deadline set by the London Documents for the convening of the Parliamentary Council. The method for selecting the delegates to the Council was agreed upon on July 27. Each Land had one delegate for every 750,000 inhabitants; an additional 200,000 or more inhabitants gave the Land another delegate. Party representation would reflect the party proportions in the respective Landtage, with the parties themselves responsible for the selection of the individual delegates.<sup>13</sup> This decision initially led to some complaints, especially from Bavaria. The Bavarian Party, a rabid states' rights party, had been legally formed only in early 1948, but had already won eight per cent of the popular vote in local elections held in April.<sup>14</sup> Since it was not represented in the Bavarian Landtag, however, it could have no representation in the Parliamentary Council.<sup>15</sup> Its protests

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<sup>12</sup>For an official account of the meeting, see DCGFC, pp. 46-49.

<sup>13</sup>Wagner, ed., Der Parlamentarische Rat, p. 286.

<sup>14</sup>Elections and Political Parties in Germany 1945-1952, p. 41.

<sup>15</sup>Wagner, Der Parlamentarische Rat, p. 287, n. 6.

were in vain, but, as shall be seen, it was able to influence indirectly a very important portion of the Basic Law from the sidelines.

The Minister Presidents also had to choose the location where the Council would meet. Several cities were considered, including Frankfurt am Main, Bonn, Karlsruhe, Düsseldorf, and Cologne. Eventually, Bonn was selected for its favorable communications network and its available convention facilities.<sup>16</sup> An equally important action taken by the Minister Presidents during this time was their decision to convene a group of constitutional experts at Herrenchiemsee for the purpose of establishing constitutional guidelines for the Parliamentary Council. Each Land chose two representatives to attend; their deliberations took place from August 10 through August 23. The product of their labors somewhat exceeded their original instructions as they produced a comprehensive draft of one hundred forty-nine articles with accompanying explanatory text.<sup>17</sup> Unanimity had not been reached on all the articles, in which case alternative proposals had been included. The Herrenchiemsee draft was significant in two respects. First, much of its wording and principles came to be incorporated in the final

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<sup>16</sup>For a background of this decision, see *ibid.*, p. 339, n. 9.

<sup>17</sup>Karlheinz Niclauss, Demokratiegründung in Westdeutschland, Die Entstehung der Bundesrepublik von 1945-1949 (Munich: Piper Verlag, 1974), p. 131.



form of the Basic Law. Second, the disagreements reflected in the Herrenchiemsee draft emerged as the major points of contention during the course of the Parliamentary Council proceedings.<sup>18</sup>

Fortunately, the delegates at Chiemsee found themselves in substantial agreement on most issues, including fundamental rights, the make up of the lower house of parliament, the legislative powers of the government, and the form of the judiciary. Essentially, the disagreements involved differing conceptions of federalism, especially in the division of financial powers between the federal government and the respective Länder. At issue also were the form of the upper chamber of parliament and the type of executive that the government should have. In the area of finance, three issues were at stake: who would have the power to legislate taxes; who would administer them (assess as well as collect); and how the tax resources would be distributed. On the issue of the upper chamber, there were three basic approaches. The first involved the Bundesrat concept of the Second Reich and Weimar eras, where the second chamber directly represented the states and had powers equal to the lower chamber, or Bundestag. A second approach envisioned a popularly elected (by the Landtage of the Länder) senate along the lines of the U.S. model, where the members would

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<sup>18</sup>For a text of the Herrenchiemsee Draft, see DCGFC, pp. 64-77.

represent the interests of the states but not be directly responsible to them. The third concept involved a mixed approach, with some members appointed by the states and others elected. In the last major area of disagreement, over the form of the executive, one view favored a strong federal president with a correspondingly weak chancellor, while the other supported a strong parliamentary executive (chancellor) and a weak federal president.<sup>19</sup>

Although the SPD was not opposed to federalism in principle, they desired that substantial powers be concentrated in the hands of the central government, including those of economic planning, financial policy, and taxation.<sup>20</sup> Realizing that whoever controlled the purse strings in the government controlled the power, they were determined to insure that financial legislation and administration remained under central government control. They were somewhat more flexible in the area of the distribution of tax revenues; although the federation must have access to a considerable portion of the revenues, the individual Länder would also share a certain proportion and have a say in distribution of revenue shared by other Länder.<sup>21</sup> For a second chamber in parliament, the SPD favored a so-called "Senate" approach

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<sup>19</sup>Ibid. The DCGFC version contains the alternate articles for each area of disagreement.

<sup>20</sup>Merk1, The Origin of the West German Republic, p. 41.

<sup>21</sup>Ibid., pp. 77-78; Golay, The Founding of the FRG, pp. 80-90.

where the members would be elected by the Landtage, and the party proportion from each state would correspond to that found in its own Landtag. However, the body would not share equal legislative powers with the lower, popularly elected chamber.<sup>22</sup> In the area of the federal executive, the SPD preferred a strong chancellor and a federal presidium with limited powers, consisting of the chancellor and the presiding officers of the two parliamentary chambers.<sup>23</sup>

The CDU and CSU were divided on these major points. Both felt that the Länder should have a great deal of autonomy and a large say in government concerning Land affairs. In contrast to the SPD, both favored administration of taxes at the Land level. The CDU tended to go along with the SPD on a split distribution of revenue, where both Land and federal government received the income from specific taxes. The CSU was agreeable to this solution, but preferred a more equitable distribution arrangement, whereby the Länder would receive the income from a wider selection of taxes (especially the beer tax, in Bavaria). Both factions approved the principle of federal legislation of taxes.<sup>24</sup>

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<sup>22</sup>Merkel, The Origin of the West German Republic, pp. 69-70; Golay, The Founding of the FRG, pp. 45-50. Since the SPD strength was concentrated in the smaller Länder, the SPD preferred equal representation for each Land in the Senate.

<sup>23</sup>Ibid., p. 124.

<sup>24</sup>Golay, The Founding of the Federal Republic of Germany, pp. 82-87; Merkel, The Origin of the West German Republic, p. 41.

On the subject of the second chamber of the parliament, there was likewise a difference in opinions. The CSU strongly favored a Bundesrat approach, by which the Bavarian influence in the body would be maximized. The CDU was more concerned with the party proportion in the upper chamber, and desired that it have powers equal to the lower chamber. If these two conditions could be achieved, the CDU was willing to compromise on the exact form of the chamber.<sup>25</sup> Both parties supported the concept of a strengthened parliamentary executive, not through increased constitutional powers, but through an electoral system which would assure the chancellor of a sufficient majority to carry out governmental policies.<sup>26</sup>

The FDP held positions somewhat between the two large parties. It tended to support the SPD in the area of federal legislation and administration of taxes, as well as flexibility in the distribution of tax revenues. As to the form of the second chamber, it favored the mixed solution noted earlier whereby half the representatives would be elected by the Landtage, the other half appointed by the state governments. The two groups would sit jointly on legislative matters, while the latter group would consider administrative matters by itself. The FDP also differed

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<sup>25</sup>Golay, p. 67; Merkl, pp. 77-78

<sup>26</sup>Golay, p. 124.

from the other parties on the type of federal executive, supporting a presidency modeled after the American example, with the president elected by a national assembly for a fixed term; he would have substantial influence over administration and policy matters.<sup>27</sup>

While these issues were being debated at Herrenchiemsee, the eleven Länder proceeded to select their delegates to the Parliamentary Council. A total of sixty-five delegates were chosen; the SPD and CDU/CSU were represented by twenty-seven members each, the FDP by five, and the Communist Party (KDP), the Center Party (Z), and the German Party (DP) by two apiece. The breakdown by Land is given in the table below:<sup>28</sup>

Land	Zone	CDU/CSU	SPD	FDP	DP	Z	KPD	Total
Bavaria	US	8	4	1				13
Hesse	US	2	3	1				6
Wurttemberg-Baden	US	2	2	1				5
Bremen	US	1						1
North Rhine-Westphalia	UK	6	6	1		2	2	17
Lower Saxony	UK	2	4	1	2			9
Schleswig-Holstein	UK	2	2					4
Hamburg	UK	1	1					2
Rhineland Palatinate	FR	2	2					4
South Baden	FR	1	1					2
Wurttemberg-Hohenzollern	FR	1	1					2
		27	27	5	2	2	2	65

Berlin was represented in the Council by five non-voting representatives.

<sup>27</sup>Ibid., pp. 45, 80, 83, and 122.

<sup>28</sup>Merkel, The Origin of the West German Republic, p. 59; For a list of delegates and a short biographical sketch of each, see DCGFC, pp. 50-62.

## II. Organization and Chronology of the Parliamentary Council

The Parliamentary Council opened on September 1, 1948. The initial speeches defined the divergent approaches that each party would take at Bonn, but the general mood was one of cooperation and willingness to avoid the bitter factional struggles that had plagued the Weimar period.<sup>29</sup> In the first plenary session, the Council agreed that the Basic Law should be approved by at least 80% of its delegates<sup>30</sup> (technically, only a simple majority was required for approval by the council).

The desire to attain an overwhelming majority within the Council was further based on the realization that a two-thirds majority of the Länder would be required for the ratification of the Basic Law. Since the CDU/CSU and SPD were fairly evenly represented in the Länder (based on the last Landtag elections, the CDU/CSU held a slight edge, having majorities or pluralities in six of the eleven Länder<sup>31</sup>), only a Basic Law which enjoyed their joint support was likely to have a chance of ratification. This altered

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<sup>29</sup>For excerpts of the speeches by Carlo Schmid (SPD), Adolf Susterhenn (CDU), Walter Menzel (SPD), and Theodor Heuss (FDP), see DCGFC, pp. 77-87.

<sup>30</sup>Merkel, The Origin of the West German Republic, p. 61.

<sup>31</sup>Edward Litchfield, ed., Governing Postwar Germany (Ithaca, N.Y.: Cornell University Press, 1953), pp. 637-50.

the role of the smaller parties in the Council, whose potential influence was diminished. Still, the FDP, with its five votes, managed to play a decisive role on several occasions. On the most controversial issues, the alignment of the FDP with either major party normally signalled the prelude to compromise between the two.<sup>32</sup>

The Council initially devoted its efforts to filling the executive positions within the body and deciding the size and composition of the various constitutional committees. Not surprisingly, a certain amount of political maneuvering occurred. Konrad Adenauer, leader of the CDU, was elected almost unanimously (with the exception of the Communists) to the position of President of the Council. On the surface, his election appeared eminently practical, since he had had extensive parliamentary experience as President of the Prussian Council of State from 1921-1933. Moreover, as leader of a major party he was entitled to a position of some importance. There were other reasons as well. The SPD figured that Adenauer at 72 was beyond his political prime and would play no decisive role in the Council or in the future government. To the Social Democrats, the position of President of the Council was largely honorary, and they had their own eyes on the position of chairman of the Main

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<sup>32</sup>Niclauss, Demokratiegründung in Westdeutschland, p. 221.

Committee, who would coordinate the work of the various constitutional committees.<sup>33</sup> Within the CDU/CSU faction itself there was some bargaining; in return for CSU support for Adenauer, the CDU agreed to accept a CSU delegate, Anton Pfeiffer, as the head of the combined CDU/CSU delegation in the Parliamentary Council.<sup>34</sup>

A Council of Elders was formed to assist the President of the Council in the conduct of the Council's business. It consisted of Adenauer and his two Vice-Presidents, Arnold Schönfelder (SPD) and Hermann Schäfer (FDP), along with ten other Council members, including the leaders of each party delegation. The Elders determined the makeup of each committee, insuring that the SPD and CDU/CSU were equally represented throughout.

As expected, Carlo Schmid, the leader of the SPD delegation, was selected as chairman of the Main Committee. The other committees and their respective chairmen were: Basic Rights, Hermann von Mangoldt (CDU); Distribution of Powers, Friedrich Wagner (SPD), Finance, Paul Binder (CDU); Governmental Organization, Robert Lehr (CDU), Constitutional Court and Judiciary, Georg Zinn (SPD); Occupation Statute, Carlo Schmid (SPD); Rules of Procedure, Adolf Schönfelder

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<sup>33</sup>Rudolf Morsey, "Die Rolle Konrad Adenauers im Parlamentarischen Rat," p. 66.

<sup>34</sup>Günter Mückler, CDU/CSU: Das Schwerige Bündnis (Munich: Verlag Ernst Vögel, 1976), p. 48fn.



(SPD); and Electoral Questions, Max Becker (FDP).<sup>35</sup>

Assigned the date of October 5 to complete their initial reports, the committees immediately began their deliberations.<sup>36</sup> Several different constitutional drafts were available for reference, but the Herrenchiemsee draft was the one to which the delegates most often referred during the proceedings.<sup>37</sup> As the committees progressed, the Council decided in late September to form a three-man editorial committee to insure that the draft articles were legally correct and did not contradict portions of other articles being submitted. The committee consisted of Heinrich von Brentano (CDU), August Zinn (SPD), and Thomas Dehler (FDP).<sup>38</sup>

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<sup>35</sup>For an organizational chart of the entire Council, see DCFQC, p. 62.

<sup>36</sup>During the course of the Council, the members met in plenary session twelve times, and in Main Committee 59 times. The Basic Rights Committee met 36 times, Distribution of Powers 21 times, Governmental Structure 32 times, Finance 20 times, and the Constitutional Court and Judiciary 11 times. Only the stenographic records of the plenary sessions and the Main Committee sessions have been published. The stenographic reports of the special committees fill 6310 typewritten pages and were not published. Similarly, the reports submitted by the committee chairmen to the Main Committee have not been published but are available in the Bundestag Archives. Klaus-Berto von Doemming, et al., eds., "Entstehungsgeschichte der Artikel des Grundgesetzes," Jahrbuch des Öffentlichen Rechts der Gegenwart, New Edition, Volume 1, 1951, p. 9.

<sup>37</sup>Merk1, The Origin of the West German Republic, p. 60.

<sup>38</sup>Ibid., p. 10. The proceedings of the Editorial Committee were not recorded; however, most of their recommendations were accompanied by explanatory comments which are available in the Bundestag Archives.

In mid-October, already behind schedule, committees finished their initial reports, and the editorial committee set to work transposing the articles into an organized draft. Completing this task by November 16, they presented the draft to the Main Committee for its first reading, which lasted until December 10. The second reading began on December 15 and was completed on January 20, 1949. When neither the Main Committee nor the constitutional committees could resolve some of the issues raised in the second reading, an interfactional "Committee of Five" was established, consisting of Carlo Schmid and Walter Menzel of the SPD, Heinrich von Brentano and Theophil Kaufmann of the CDU, and Hermann Hoepker-Aschoff of the FDP.<sup>39</sup> This committee settled the major interparty differences by early February, and the draft went through its third reading in the Main Committee between February 8-10.

At this point, the Council submitted the draft to the Military Governors, hoping to get their approval before sending the document to the plenary session for final approval. After considerable delay, the Military Governors delivered their comments on March 2. Their objections were not extensive but involved the sensitive issues of legislative and

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<sup>39</sup>According to Von Doemming, no records were kept of the meetings of the Committee of Five (ibid., p. 11).

financial powers of the Länder and the federation. As a result, the Committee of Five was expanded to seven members, with the addition of Hans Seebolm of the German Party (DP) and Johannes Brockmann of the Center Party (Z). They labored through the remainder of March in an attempt to achieve a compromise acceptable to both the German factions and the Allies. Their efforts failed.<sup>40</sup> The deadlock continued into April, and it was only the intervention of the three western foreign ministers on April 22 that finally enabled a solution to be found. On April 25, the Allies and the Germans resolved their outstanding differences; the draft was submitted to the Main Committee for its fourth reading on May 5-6. The plenary session convened on the afternoon of May 6 for the second reading, and the third reading was completed on May 8, when the draft was approved by a vote of 53-12.

### III. The Parliamentary Council, September 1948-March 2, 1949

The first big controversy of the Parliamentary Council, over the form of the second legislative chamber, was precipitated by a party not even represented in the Council. The Bavarian Party, having been left out of the proceedings, began to exert considerable pressure on the CSU delegation to

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<sup>40</sup>Some transcripts and reports of these meetings were made, but von Doemming does not specify dates or subjects discussed (ibid., p. 12).

maintain their ultra-federalistic principles. This proved to be an extremely difficult task for the CSU, since in many instances their views were opposed by the SPD and FDP, and in some cases by the CDU itself. Every setback for the CSU in the Council represented a victory for the Bavarian Party, to which an increasing number of the more conservative CSU members threatened to defect. The centerpiece of the CSU platform was the Bundesrat concept of the upper chamber, designed to protect the interests of the states and to maintain Bavarian influence within the government. If the concept were defeated, the CSU could expect to lose its dominant position in Bavarian politics to the Bavarian Party. In mid-October, this is precisely the situation it was faced with. The mixed concept of the FDP had gained ascendancy, and even the SPD were ready to acknowledge defeat for their "Senate" approach if the FDP and CDU/CSU could win over either the DP or the Center. At this point, the CSU and SPD saw their way to a compromise. In late October, Bavarian Minister President Hans Ehard and SPD delegate Walter Menzel engineered an agreement whereby the SPD would agree to a Bundesrat with weakened powers in return for CSU support for a consolidated federal financial administration.<sup>41</sup>

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<sup>41</sup>Merkel, The Origin of the West German Republic, pp. 48, 92; Heidenheimer, Adenauer and the CDU, p. 166.

The implications of such an agreement were immediately clear to Konrad Adenauer. If the SPD could split the CDU/CSU coalition, it would enjoy a comfortable majority in the Council; the CDU would be emasculated. Adenauer moved quickly to heal the rift, traveling to Munich to confer with top CSU leaders. In the end, the arrangement between the CSU and the SPD was not consummated. However, the CDU was forced to support the Bundesrat plan, and the SPD and FDP decided to support it also, as long as its powers were not to be equal to the Bundestag.<sup>42</sup> In this way, the issue was resolved; no one was entirely happy, not even the Bavarian Party, which was now convinced that the Bundesrat did not have enough power to protect the individual states.<sup>43</sup>

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<sup>42</sup>Golay, The Founding of the Federal Republic of Germany, pp. 49-50; Niclauss, Demokratiegründung in Westdeutschland, p. 221; and Mühler, CDU/CSU: Das Schwerige Bündnis, p. 50.

<sup>43</sup>Although the principle of a Bundesrat had been decided upon, other issues concerning the second chamber remained to be resolved, particularly how the Länder were to be represented in it. The SPD wanted each Land to be equally represented, while the CDU/CSU, Center, and German Parties wanted each Land represented according to its population. The FDP intervened decisively to engineer a compromise. Largely the idea of Theodor Heuss, the proposal gave each land, regardless of size, three votes; those with over two million in population were granted four votes, and those with over six million, five votes. Golay, The Founding of the Federal Republic of Germany, pp. 51-52.

As the initial draft progressed through its first reading in the Main Committee in November and December, the basic party alignments began to emerge. After the controversy over the Bundesrat, the CDU/CSU appeared united once again, supported in general by the conservative German Party. The SPD and FDP also seemed to agree on most of the issues, a fact which surprised some observers because the FDP had tended to support the CDU/CSU faction in the Bizonal Economic Council in Frankfurt.<sup>44</sup> Only in the area of socialization was the FDP clearly opposed to SPD policies.<sup>45</sup> The Center Party normally supported the more centralistic positions of the SPD, with the exception of religious and educational issues. The KPD, when it was not busy trying to disrupt or delay the proceedings, usually abstained from voting entirely or voted negatively.<sup>46</sup>

As the individual committees finished their work during October, the French became increasingly uneasy over the centralistic direction of some of the articles, especially those on financial administration and legislation.<sup>47</sup> In

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<sup>44</sup> Niclauss, Demokratiegründung in Westdeutschland, p. 221; Gutscher, Die Entwicklung der FDP, p. 37.

<sup>45</sup> Gutscher, Die Entwicklung der FDP, p. 38.

<sup>46</sup> Despite these trends, the party alliances proved to be flexible, as later events would show. Niclauss, Demokratiegründung in Westdeutschland, p. 221.

<sup>47</sup> Clay Papers, II, Item 574, pp. 913-17.

November, General Koenig was finally able to persuade Clay and Robertson that the constitutional guidelines given to the Military Governors at the conclusion of the London Six Power Conference should be communicated to the Parliamentary Council.<sup>48</sup> This was accomplished with the delivery of an aide-memoire on November 22.<sup>49</sup> Intended to interpret further the principles enunciated in Document I of the London Documents, it specified that the federal government was to have a bicameral legislature in which one house was to safeguard the rights of the individual states. Both the executive and central government were to have clearly defined powers which would not infringe on Länder prerogatives, particularly in the areas of education, culture, religion, local government, and public health. Financial legislation and administration by the federation were to be limited to areas where the central government was solely responsible or where uniformity was essential. Finally, each citizen was to have equal access to the civil service based on ability; if elected to a public office, the public servant would have to resign his office.

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<sup>48</sup>As noted earlier these guidelines had been withheld at the time in the hope that the issues it contained would not be raised. See footnote 3.

<sup>49</sup>The text of the note is contained in DCGFC, p. 105.

Reaction to the aide-memoire in the Parliamentary Council was mixed. The CDU/CSU generally approved of the guidelines since they were in general accordance with their own views. This was not the case with the SPD and FDP, who were diametrically opposed to limiting the powers of the central government in financial administration and legislation. Work in the Council slowed as the party delegations considered their options. In part due to the differing interpretations of the aide-memoire, the first reading in the Main Committee came to a close in mid-December with notable differences still existing in the areas of the powers of the Bundesrat, the division of financial powers between the federation and states, and religion and education.<sup>50</sup>

These differences almost led to the demise of the Council. On December 16 and 17 a delegation from the Parliamentary Council, headed by Konrad Adenauer, met with the Military Governors in Frankfurt to receive the latest information on the progress of the Occupation Statute. During the meeting, Adenauer mentioned that the Basic Law would take longer than anticipated to complete, since disagreements remained in the areas noted above. On December 18, the SPD and FDP lodged a protest that Adenauer had exceeded his instructions by mentioning the areas of disagreement in the Council, in effect soliciting the

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<sup>50</sup> Monthly Report of the Military Governor, December 1948, p. 13.



assistance of the Military Governors to act as arbiters in the disagreement. The incident, dubbed the "Frankfurt Affair" by the press, quickly escalated as recriminations were exchanged with increasing vehemence. At the beginning of January, the SPD hierarchy in Hanover directed that a vote of no confidence be introduced against Adenauer. Carlo Schmid and Walter Menzel, with a better grasp of the situation in Bonn, realized that such a motion might well break up the Council, since by this time the CDU/CSU were solidly united behind Adenauer. On January 4, the SPD delegation defeated the Hanover proposal, and it was not brought before the Council. The next day Adenauer was exonerated by the Council of Elders, and it was decided that work should be continued on the Basic Law. The crisis was over, but a certain aftertaste of bitterness remained on both sides that would continue throughout the remainder of the proceedings and beyond.<sup>51</sup>

The second reading of the draft Basic Law had begun in the Main Committee on December 15; temporarily sidetracked by the "Frankfurt Affair," deliberations began anew after January 5 and ended on January 20. The Committee decided to postpone some of the thornier problems dealing with the legislative competency of the Bundesrat and the financial

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<sup>51</sup>Adenauer's version of the affair is contained in his Memoirs, 1945-1953, pp. 127-29; Carlo Schmid recalls his role in Erinnerungen, pp. 380-82. A detailed view of the entire crisis is contained in Morsey, "Die Rolle Konrad Adenauers," pp. 73-78.

structure of the new government until the third reading. At this point, the Council of Elders decided to organize the interfactional Committee of Five for the purpose of ironing out party differences before the third reading. Adenauer, who had confounded the SPD hopes that he would play a passive role as Council President, demonstrated that despite the controversy in December, he was still committed to a rapid and successful conclusion of the Basic Law. To insure an atmosphere of cooperation on the Committee of Five, he saw to it that two moderate federalists, Brentano and Kaufmann, were selected to represent the CDU/CSU faction.<sup>52</sup>

The Committee of Five met on two occasions, January 25-27 and February 1-2, to hammer out a party compromise of major proportion. Referred to later as "the great compromise," it granted the SPD its demand for a consolidated federal financial administration. In return, the powers of the Bundesrat were increased significantly, especially in financial matters. With this hurdle out of the way, the third reading was completed quickly between February 8-10.

This sudden burst of activity was not due to the "great compromise" alone. Two other events of importance had also occurred.<sup>53</sup> The first, overshadowed perhaps by the "Frankfurt Affair," involved an announcement of the

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<sup>52</sup>Heidenheimer, Adenauer and the CDU, p. 168.

<sup>53</sup>FRUS 1949, Vol. III, p. 190.

International Authority for the Ruhr on December 29, 1948.<sup>54</sup> It provided that West Germany was to assume an active voice on the Authority's control council only after a legal government was established. Although the entire concept of submitting Ruhr output to international control was anathema to the Germans, the more practical ones realized that the situation could only be improved through participation in the control council and therefore pushed for faster progress in Bonn. The second event was the publication on January 31 of an interview with Joseph Stalin by correspondent Kingsbury Smith. Smith had posed the question that if the Western Allies agreed to "postpone the creation of a separate West German government, pending a meeting of the Council of Foreign Ministers to consider the German problem as a whole, will the Government of the USSR be prepared to lift the restriction on communications between Berlin and the Western Zones of Germany?" Stalin's answer

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<sup>54</sup>As mentioned earlier, the basis for the organization had been agreed to at the London Six Power Conference. Designed to insure that the resources of the Ruhr would not be used for aggressive purposes and to coordinate its output for the good of Western Europe, the Authority was to consist of a Council of the six powers. West Germany was to assume an official seat on the Council after its government was established. Until then, it would be represented by the Occupation Authorities. The Germans, as expected, were not enthusiastic about having their most vital industrial area so closely controlled. For a text of the Ruhr Agreement, see Germany, 1947-1949. The Story in Documents, pp. 334-44.

was affirmative, provided that the Western Allies lifted their counterblockade at the same time.<sup>55</sup> The delegates in the Parliamentary Council felt that any such Council of Foreign Ministers would be less likely to alter the London Program if a West German government were already in existence when it met. Combined, the two events provided a powerful incentive to forge ahead with the Basic Law.

These events also prompted the Bonn delegates to proceed without knowing the contents of the Occupation Statute. Up to now, they had felt strongly that the draft should not be submitted to the plenary session for approval until the Occupation Statute defined the powers that would be reserved to the Allies and the financial burdens to be assumed by the new government.<sup>56</sup> The Occupation Statute was still not available, but the Parliamentary Council was determined to press on regardless. On February 11, it submitted the draft to the Allied liaison officers for transmission to the Military Governors. Plans for convening a full plenary session were discussed, and a tentative date of February 18 was decided upon.<sup>57</sup>

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<sup>55</sup>W. Phillips Davison, The Berlin Blockade, A Study in Cold War Politics (Princeton: Princeton University Press, 1958), p. 254.

<sup>56</sup>"Germans Advance New Constitution," New York Times, February 5, 1949, p. 34.

<sup>57</sup>"Progress Delayed on Constitution," NYT, February 18, 1949, p. 10.

During February, the Social Democrats began formulating the position they would take on the Basic Law draft if it were rejected by the Military Governors. The British liaison officer to the Parliamentary Council, Chaput de Saintonge, had spoken to Carlo Schmid on February 6.

Schmid gained the impression that the "British would not bother us any more" about the Basic Law. The French would be the most stubborn in their opposition to the centralistic elements of the draft but the British and Americans could not afford to have this opposition ruin their plans for Germany and would prevail over the French. Several days later, Schmid and other SPD leaders met in Hanover to discuss the situation with Kurt Schumacher, now almost recovered from his operation from the year before. Against the advice of SPD moderates like Ernst Reuter, the party leadership agreed not to accept any Basic Law which did not give the federal government adequate powers to implement its future foreign and domestic policies.<sup>58</sup>

Interestingly enough, Saintonge visited Konrad Adenauer on February 7, and Adenauer gained an entirely different perception of the status of the Basic Law. According to Adenauer, Saintonge told him that the French would oppose at least two points on the draft--regarding finance and civil service. He went on to say that, given the present

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<sup>58</sup>Schmid, Erinnerungen, p. 390.

international situation, the U.S. and Britain could not afford to lose the French. If it came to a choice between stability in France and approval of a West German constitution, the Anglo-Americans would opt for French stability.<sup>59</sup> It is doubtful that Saintonge was purposely misleading one or the other German leader, since such a move could only endanger the passage of the Basic Law in its present form, something that the British wished to avoid at all costs. More likely, either Schmid or Adenauer misunderstood Saintonge's intent. What is important is that the two Germans came away from their conversations with Saintonge with entirely opposite impressions of how the Allies would react to the February 10 draft; these impressions would have a critical bearing on their actions in the following weeks.

With the draft now in the hands of the Military Governors, two differing opinions began to emerge in the Parliamentary Council, perhaps encouraged by the conversations with Saintonge. The SPD proposed that the draft be submitted to the plenary session as soon as possible for approval. It was their view that the Allies would be much less likely to object to the final, official Basic Law than

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<sup>59</sup>Adenauer, Memoirs, 1945-1953, p. 130.

to the draft which they now possessed.<sup>60</sup> Others, including Konrad Adenauer, counseled a more cautious approach, not wanting to present the Military Governors with a fait accompli which stood a good chance of being rejected in its present form. The Parliamentary Council could not survive such a blow to its prestige.<sup>61</sup> So great was Adenauer's concern that he appealed to the Military Governors indirectly to inform the Parliamentary Council of their thoughts on the Basic Law. If there were objections, he could justify postponement of the plenary session.<sup>62</sup>

The draft handed to the Liaison Officers on February 11 was the topic of a February 16 meeting between Clay, Robertson, and Koenig. Both the Americans and the French had numerous reservations, while the British were essentially satisfied with its provisions.<sup>63</sup> After much discussion, the three decided to inform the Parliamentary Council that they had certain objections to the draft, and that these objections

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<sup>60</sup>"Draft Constitution for West Germany," Times (London), February 15, 1949, p. 3.

<sup>61</sup>Adenauer had expressed this concern as early as November 1948, and it was no doubt strengthened by his conversation with Saintonge. Memoirs 1945-1953, p. 127.

<sup>62</sup>Robert Murphy, memorandum of conversation with Jakob Kaiser, February 26, 1949, National Archives, Record Group 84, POLAD Files, Box 461, File 56 (hereafter cited as POLAD, followed by box and file number).

<sup>63</sup>A report of the meeting is contained in FRUS, 1949, Vol. III, pp. 199-204.

would be forthcoming as soon as possible. They directed their political advisers to formulate a list of specific objections to the draft so that a joint allied position could be formulated. Agreement in principle on these points was reached between the Military Governors on March 1, and on the following day, their reservations were officially presented to the Parliamentary Council.

The March 2 memorandum contained far more detailed suggestions than the aide-memoire on November 22.<sup>64</sup> A total of eight points were raised, six of them relatively minor in character, concerning aspects of security, independence of the judiciary, establishment of federal administrative agencies, civil service, Länder boundaries, and the status of Berlin. The other two would require substantial revision in the area of priority legislation of the federation and Länder, and in the financial powers to be granted the two.<sup>65</sup>

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<sup>64</sup>For a text of the March 2 aide-memoire, see DCGFC, pp. 108-110.

<sup>65</sup>In the February 10 draft, Articles 35 and 36 gave the Federal Government exclusive powers of legislation in 11 areas and powers of priority legislation in 22 areas. The Länder retained the right to legislate in these latter areas "as long and insofar as the Federation makes no use of its right to legislate." (DCGFC, pp. 96-97). The March 2 memorandum requested that the Länder have priority legislation in those areas, "except where it is clearly impossible or where the legislation if enacted would be detrimental to the rights and interests of other Länder" (*ibid.*, p. 108). The changes suggested for the financial area were more serious, since they involved the agreements reached by the Committee of Five in the "great compromise." The Allies felt that the February 10 draft gave the Federation too much power in the areas of financial administration and



Both suggestions were designed to give the Länder more legislative and financial independence vis-a-vis the federal government.

General Clay was initially optimistic that the proposed changes had been favorably received and estimated that they would lead to the desired modifications.<sup>66</sup> It was not until late March and April that the extent of his miscalculation would become fully apparent.

IV. Parliamentary Council, March 2 through March 31, 1949

General Clay's optimism about the reception of the March 2 memorandum did not last long. Newspaper accounts reported that the Bonn leaders were generally satisfied with the Allied suggestions, but as with the November 22 aide-memoire, reaction within the council closely followed party lines.<sup>67</sup> The FDP and SPD opposed the portion dealing with finance. Carlo Schmid doubted that the division of financial powers between the federal government and the individual

legislation, and that the method of distribution of tax resources would give the government too much control over the Länder. Their suggestions were designed to correct this deficiency (ibid., p. 109).

<sup>66</sup>Clay Papers, II, Item 677, p. 1031.

<sup>67</sup>"German Leaders Gratified," NYT, March 4, 1949, p. 4.

Länder would provide the financial basis for a sound economy.<sup>68</sup> He was convinced of the soundness of the SPD strategy adopted in February that standing firm would eventually win out, since the Allies needed Germany more than Germany needed the Allies. As a result, he determined that the SPD delegation should continue to support the February 10 draft, while at the same time avoiding any direct provocation of the Allies.<sup>69</sup> Dr. Hoepker-Aschoff, the financial expert for the FDP, expressed his dissatisfaction with the proposed Allied elimination of financial equalization, a system whereby the Germans had intended to use federal funds to correct the financial imbalance between the poor and rich Länder.<sup>70</sup>

Some leading CDU delegates were concerned about the prospect of allowing the Länder a substantial increase in their legislative competence.<sup>71</sup> Konrad Adenauer, ever the pragmatist, argued compromise with the Allies. The financial suggestions of the Allies, if they proved unworkable, could be amended at some future date. The most important objective for the present was to establish a government so that

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<sup>68</sup>"Kommentare zu Alliierten Empfehlungen," Neue Zeitung, March 4, 1949, p. 1.

<sup>69</sup>Schmid, Erinnerungen, pp. 391-92.

<sup>70</sup>"Bonn hofft auf einen Kompromiss," Neue Zeitung, March 8, 1949, p. 1.

<sup>71</sup>"Francois-Poncet konferiert in Bonn," Neue Zeitung, March 5, 1949, p. 1.

Germany, or at least the western portion of it, could begin work on regaining its rightful place within the European community.<sup>72</sup>

With the parties once more at odds over how to proceed, the Council of Elders decided to expand the Committee of Five to seven members. Johannes Brockmann (Center Party) and Hans Seebohm (German Party) were added in hopes of broadening the viewpoint of the committee and facilitating further compromise. Between March 8 and March 10, the committee met several times with the Allied liaison officers in order to define more clearly the Allied suggestions.<sup>73</sup> Based on these

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<sup>72</sup>Adenauer, Memoirs, 1945-1953, pp. 131-33. On March 19, Adenauer declared at a party meeting: "I for my part don't understand why we torture ourselves about this question all these months, as though this were a matter as vital as the creation of the world....Quite the contrary. Even a bad constitution is better than the present situation." Heidenheimer, Adenauer and the CDU, p. 170.

<sup>73</sup>The Allies assigned liaison officers from their political staffs to the Parliamentary Council to act as their representatives in Bonn. Their function was to keep the military governments abreast of the latest developments in Bonn and to explain the Allied viewpoints to the Bonn delegates. It was initially hoped that they would be able to steer the Germans in the direction desired by the Allies, but this became an impossible task since the Allies rarely were in agreement regarding the constitution. Adenauer's comment to Robert Murphy reflects how much of the liaison business was conducted: "He (Adenauer) said that the Liaison Officers were perhaps apt to entertain a little too much and that the Germans are prone to talk too freely under the influence of alcohol, but apart from that he had no comment." Robert Murphy, memorandum on meeting with Adenauer, November 24, 1948, POLAD, Box 461, File 18.

conversations, the committee submitted a counterproposal to the section of the March 2 memorandum dealing with legislative powers of the federation and Länder.<sup>74</sup> Where the Allies had enumerated twenty-six areas over which the Länder were to exercise priority legislation, the Committee of Seven countered with twenty-two areas where the federation and Länder were to share concurrent powers of legislation.

Almost immediately, the liaison officers informed the committee that the counterproposal was insufficient. The rebuff gave the members of the committee the opportunity to adjourn in order to meet with their respective parties.<sup>75</sup> During the ensuing week, the party delegations in the Parliamentary Council conferred among themselves and with the Minister Presidents of the western zone Länder. No new departures resulted from any of the meetings, where the general trend was to reaffirm the strategies decided upon in the past weeks.<sup>76</sup> The Committee of Seven reconvened on March 16 and 17 to draft a more definitive counterproposal to the March 2 memorandum.<sup>77</sup> Some concessions were made;

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<sup>74</sup>DCGFC, pp. 110-11.

<sup>75</sup>Monthly Report of the Military Governor, March 1949, p. 8.

<sup>76</sup>"Länderchefs treffen Bonner Abgeordnete," Neue Zeitung, March 15, 1949, p. 1.

<sup>77</sup>The text of the March 17 proposal is contained in DCGFC, pp. 112-113.

six of the eight areas generally followed the guidelines contained in the memorandum. In the major areas of legislation and finance, however, the Committee yielded very little from their initial position. The federation still enjoyed overwhelming legislative powers. Although the Länder were empowered to administer and derive the resources from specific taxes, the federation could still take a portion of the proceeds in order to compensate the poorer Länder. The Committee presented their proposals to the liaison officers on March 18.<sup>78</sup>

A week of anxiety and rumor passed before the Allied response was delivered. On March 25, the liaison officers declared that the counterproposals, although more satisfactory than before, still did not conform to the March 2 memorandum. However, they explained that the Military

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<sup>78</sup>The Committee of Seven was aware that the provisions of finance and legislation would not be acceptable to the Allies. Hans Simons, the chief U.S. liaison officer, wrote that Theophil Kaufmann, one of the CDU members of the Committee, was embarrassed "for being forced to submit once more a text of which everybody knew that it was unsatisfactory [*sic*]. However, he felt that in the interest of those members of the SPD within the Parliamentary Council who wanted to be more conciliatory, it was necessary to provoke one more definite rebuke from the Allies." Hans Simons, memorandum to Edward Litchfield, 18 March 1949, National Archives, Record Group 260, Office of Military Government (U.S.), Civil Administration Division, Box 458, File 1 (hereafter cited as OMGUS, CAD, followed by box and file number).

Governors had not considered the proposals officially; this would be done only upon submission of the final, complete draft of the Basic Law.<sup>79</sup> Activity in the Committee of Seven ceased once more as the members went back to their parties for further consultation.

German reaction to the rejection was confused. Wilhelm Wagner (SPD), chairman of the Committee on Distribution of Powers, despaired of a solution, noting sadly, "We have reached the end."<sup>80</sup> Some of his SPD colleagues were of a different opinion. In late March, the press had announced that the Foreign Ministers of France, Great Britain, and the United States would meet at the beginning of April to sign the Atlantic Pact. Extensive discussions were expected in the areas of Allied disagreement concerning Germany, including the Occupation Statute, trizonal fusion, and the Basic Law. The SPD leaders were hopeful that some modification of the Allied position of March 2 would be forthcoming.<sup>81</sup> Rumors that the British Foreign Minister would persuade the other foreign ministers to accept the German proposals of March 17 were circulating, as were those

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<sup>79</sup>FRUS, 1949, Vol. III, p. 232.

<sup>80</sup>"West Faces Crisis on German State," NYT, March 25, 1949, p. 12.

<sup>81</sup>"Germans Expect Revival," NYT, March 26, 1949, p. 4; Clay Papers, II, Item 701, p. 1067.

saying that the Allied position of March 25 was merely a bluff.<sup>82</sup>

The Minister Presidents made a strong appeal for a speedy completion of the Basic Law. Meeting at Koenigstein on March 24, they pointed out that the "present state of suspense fatally endangers reconstruction and jeopardizes the realization of the Marshall Plan." They urged the parties to resolve their differences, which to them did not seem to be of "such a nature as to render a speedy and satisfactory solution impossible."<sup>83</sup>

In the midst of the uncertainty, the Allies announced on March 26 several minor territorial adjustments in favor of France and the Benelux countries. The move was extremely ill-timed, and the reaction by the Germans was predictably indignant; most of the Bonn delegates voiced their

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<sup>82</sup>"Three Powers Warn Germans to Speed Constitution for New Government," NYT, March 31, 1949, p. 4; an unsigned memo dated March 31 in the correspondence file of Hans Simons relates that a French journalist, after having spoken to one of the French liaison officers on March 26, met with a German acquaintance on March 27. "After eight whiskies," the journalist told his friend that "the Allied statement of last Friday in Bonn represents the maximum agreement which the Allies can reach. If now the Germans stick to their decisions, nothing much can be done because then the governors will pass them on to their home governments and the latter will swallow the German decisions." When a German asked the journalist what the real attitude of the Allies was, the journalist replied, "For God's sake, it has to be kept completely secret, else we won't succeed in bluffing the Germans!" OMGUS, CAD, Box 458, File 1. See also the account of Walter Strauss, "Die Arbeit des Parlamentarischen Rates," Politisches Jahrbuch der CDU/CSU, 1950 (Frankfurt am Main: K.G. Lohse, 1950), p. 164.

<sup>83</sup>DCGFC, p. 113.

condemnation.<sup>84</sup> Fortunately, this was offset to some extent on March 29 by the news that 150 factories scheduled for dismantling would not be dismantled, pending final approval by Britain and France.<sup>85</sup>

In the last days of the month the leadership of both major parties met separately to plan their next moves. On March 30, the SPD leadership announced that it would stand by its compromise of February as amended by the Committee of Seven in its proposal of March 17. It called upon the other factions in the Council to do likewise, recommending that the draft be forwarded directly to the Main Committee and thereafter to the plenary session.<sup>86</sup> In a press conference following the announcement, Carlo Schmid stated that if the Basic Law were changed to conform to the March 2 memorandum, there was a risk it would not be approved by the Council. "The Allies aren't the only ones who can reject the constitution," he warned.<sup>87</sup>

In the meantime, the CDU/CSU was being torn between its promise to the SPD to abide by the party compromise of

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<sup>84</sup> Monthly Report of the Military Governor, March 1949, p. 10.

<sup>85</sup> Ibid.

<sup>86</sup> DCGFC, p. 114.

<sup>87</sup> "SPD besteht auf Bonner Vorschlägen," Neue Zeitung, March 31, 1949, p. 1.



February and its desire to see the Basic Law through to its conclusion. The latter alternative involved accepting the suggestions of the Allies, an action which would be welcomed by the more federalist members of the delegation, but which would also leave the delegation open to collaborationist charges from the SPD. Adenauer himself was in a no-win situation. By continuing to support the party compromise, he was enhancing Schumacher's position; if he opted for the Allied recommendations, the power of his party rivals in the Länder (the Minister Presidents) would be substantially increased.<sup>88</sup> Eventually, he recommended compromising with the Allies. On March 30, the same day of the SPD announcement, the CDU/CSU faction declared that it could not justify wrecking the Basic Law over the financial problem. Its duty was to "prepare by way of new proposals a solution which takes into consideration German interests and which would secure the approval of the Basic Law by the Military Governors."<sup>89</sup> To confuse the issue further, however, the CDU/CSU turned completely around on the following day. In the Committee of Seven, it acknowledged that it was still bound by the earlier compromise with the SPD and the other parties.<sup>90</sup>

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<sup>88</sup>Heidenheimer, Adenauer and the CDU, p. 170.

<sup>89</sup>DCGFC, p. 114.

<sup>90</sup>"CDU steht zum Bonner Kompromiss," Neue Zeitung, April 1, 1949, p. 1.

The Soviets also increased their pressure during March. Sensing that the deliberations in Bonn had reached a crisis point, they renewed their efforts to woo Western Zone politicians away from the London Program.<sup>91</sup> In late February, the Soviet Zone CDU leader, Otto Nuschke, visited the Western Zones, talking with key West German leaders about German unity and promoting the neutrality concepts of the Nauheimer Circle.<sup>92</sup> Simultaneously, Rudolf Nadolny, former German ambassador to Moscow who had lived in the Soviet Zone until December 1948, began contacting prominent West Germans, also promoting German unity. In March, Nuschke and Nadolny stepped up their activities, accompanied by complementary moves by the Soviets in the Eastern Zone designed to establish the framework of a separate Eastern Zone government. Nuschke, after meeting with Konrad Adenauer on March 1, reminded reporters that the Frankfurt Economic Council of the Bizone had been followed by the formation of the German Economic Commission in the Eastern Zone; it was logical that a similar development would follow the establishment of a West German government.<sup>93</sup>

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<sup>91</sup>FRUS, 1949, Vol. III, p. 221; see also Monthly Report of the Military Governor, March 1949, pp. 9-10.

<sup>92</sup>"Soviet Aides Push Unity in Germany," NYT, February 26, 1949, p. 22. The Nauheimer Circle was a group formed by Dr. Ulrich Noack in mid-1948 to promote the idea of German neutrality. See Schwarz, Vom Reich zur Bundesrepublik, p. 357.

<sup>93</sup>"Nuschke will locken," Neue Zeitung, March 2, 1949, p. 2.

On March 13, Nadolny met with sixteen influential Western Zone politicians at Bad Godesberg. The group included Hermann Pünder, chairman of the Executive Committee of the Bizonal Economic Administration, and Ludwig Erhard, director of the Bizonal Department of Economics. Nadolny made a strong pitch for reunification, stressing Russia's willingness to guarantee Germany's western frontiers against the claims of the French and Benelux countries. Not only would Russia reconsider the question of eastern frontiers, it was also contemplating the possibility of permitting the SPD to organize in the Soviet Zone once more. While they would prefer to see the Bonn Basic Law defeated, the Soviets felt confident that they would be able to install a one-reich government within three years, with or without a West German State.<sup>94</sup> Thus the Russians were offering tantalizing prospects for reunification, with an underlying threat that even without the cooperation of the West Germans, a (presumably) Soviet-oriented government would dominate all of Germany within a few years.

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<sup>94</sup>The report of the meeting is contained in the OMGUS Daily Political Report for March 31, 1949. The source of the report was one of the attendees of the conference, Baron von Prittwitz und Gaffron, former ambassador to Washington and at the time a CSU deputy in the Bavarian Landtag. According to the report, the Baron's account was obtained without his knowledge. OMGUS, CAD, Box 254a, File 2. The report also seems to contradict Nadolny's numerous public denials that he was representing the Soviets. See for example "Nadolny's Sorgen um die deutsche Einheit," Neue Zeitung, March 22, 1949, p. 2, and his own memoirs, Mein Beitrag (Wiesbaden: Limes Verlag, 1955), p. 182.

On March 17, the Soviet Zone announced that a constitution would be presented to the People's Council within the week,<sup>95</sup> and on March 18, Wilhelm Pieck, one of the leaders of the Eastern Zone Socialist Unity Party, extended an invitation to the Parliamentary Council and the Frankfurt Economic Council to attend a "People's Council" on April 8 in Braunschweig (in the British Zone).<sup>96</sup> The invitation was declined, but the pressure remained as Nuschke and Nadolny continued their travels through the Western Zones.<sup>97</sup>

At the end of March, the political picture in Germany was not reassuring. The fate of the Basic Law, cast in doubt by the Allied memorandum of March 2, was even more uncertain by the end of the month. The two major factions in the Parliamentary Council were momentarily in agreement, but their unity was at best illusory. For the Western Allies, however, the outlook was not quite as bleak. Behind the scenes, progress was being made at last toward a joint policy concerning Germany. By the end of the month, preparations were underway that had the potential for bringing about a successful conclusion to the London Program.

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<sup>95</sup>"More Delay Seen on German State," NYT, March 17, 1949, p. 9.

<sup>96</sup>"Pieck lädt Bonn und Frankfurt ein," Neue Zeitung, March 19, 1949, p. 2.

<sup>97</sup>An indication of the effectiveness of such pressure is contained in a message from the Consul General in Bremen to the State Department, dated March 15, 1949: "Confidentially I might state Adenauer approached me recently in regard question of his personal safety in event Russian invasion." FRUS, 1949, Vol. III, p. 225.

### CHAPTER III

Western Allies, July 1948-March 1949

As the events in Bonn were gathering momentum in late 1948 and early 1949, the Western Allies turned their attention to matters of more immediate importance. For the United States, the Berlin Blockade posed a particularly difficult problem. Although the Soviets had initiated the first phase of the blockade in April 1948, it was not until late June, after the London Agreements clarified Allied intentions in West Germany, that the blockade was undertaken in earnest. The Soviets claimed that the final steps had been taken in response to the currency reform introduced in the western zones on June 20. In reality, they were attempting to reverse the course set in motion by the London Program toward the establishment of a West German government.<sup>1</sup> General Clay did not feel that the Soviets were prepared to go to war over Berlin, and recommended that armed convoys break the blockade.<sup>2</sup> President Truman rejected this option, adopting instead the airlift concept as a

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<sup>1</sup>Davison, The Berlin Blockade, p. 123.

<sup>2</sup>Ibid., p. 126.

temporary expedient to supply Berlin until negotiations were successful in lifting the blockade.<sup>3</sup> To improve the bargaining position of the Allied negotiators, Truman played one of his few (if not only) trump cards by sending sixty B-29 bombers to England in mid-July, the first reversal of the flow of U.S. military power out of Europe since 1945.<sup>4</sup>

The blockade posed a moral dilemma for U.S. policy makers, involving seemingly mutually exclusive options. The London Program had resulted from the realization that the Western Allies could not hope to govern Germany in collaboration with the Soviets. To solve the Berlin problem permanently, however, would necessitate an agreement with

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<sup>3</sup>Truman's military advisers were extremely reluctant to support any option that might provoke an armed Soviet response. Total U.S. troop reserves at the time were two and one-third divisions, of which only one could be committed with any speed. Millis, ed., The Forrestal Diaries, p. 459.

<sup>4</sup>The sending of B-29's to Britain was significant because they were the only plane in the U.S. arsenal capable of carrying the atomic bomb. Interestingly enough, only 32 B-29's in the entire Air Force fleet were modified to carry the atomic bomb, and none of these were sent to Britain; moreover, no atomic bombs were at the time stored in overseas locations, making the entire move a huge bluff. For a description of this particular event and its effect on the development of Anglo-American military strategy, see Harry Dolton, "The Evolution of Strategy: Britain and the United States, 1945-1948," (Master's Thesis, University of North Carolina, Chapel Hill, 1977), pp. 246-51. The British seem not only to have welcomed the U.S. offer to send the planes, but to have suggested it in the first place (FRUS, 1948, Vol. II, p. 924). They also demonstrated an early resolve to stay in Berlin, recognizing that the entire issue of European recovery was at stake and accepting the risk of war which was inherent in taking such a position. Clay Papers, II, p. 707, and Davison, The Berlin Blockade, p. 116.

the Russians on a unified Germany, which would logically involve abandonment of the London Program. The task of State Department policy planners was to decide which course was the more justifiable in light of U.S. interests.

Undeniably, West European recovery was important, but so was avoiding the risk of war with the Soviet Union.

In the meantime, negotiations with the Soviets over Berlin began at the end of July. By this time, the Allies had initiated a counterblockade of sorts against the Soviet Zone by stopping rail traffic traveling across the bizonal area between non-German countries and the Soviet Zone. The effectiveness of this measure was perhaps reflected in the seeming indifference of Stalin and Molotov to reach an acceptable agreement with the Allied negotiators. At the end of August, both sides arrived at an arrangement whereby the restrictions on communications to and from Berlin would be lifted in return for introducing the Soviet Zone mark in Berlin, pending agreement of the four military governors on the implementation of these measures. When the talks shifted to the military governors in Berlin, however, the Soviet Governor, Marshall Sokolovsky, proved unwilling to arrive at any acceptable solution. By the first week in September, talks had broken down completely.<sup>5</sup>

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<sup>5</sup>Davison, The Berlin Blockade, pp. 158-62, 183-87.

The supply situation in Berlin had improved considerably by this time. Optimists involved in the airlift operation felt that Berlin could be supplied by air even during the winter months. New developments in ground controlled landings of aircraft now gave the airlift an all-weather capability. Pressure on the Allies to negotiate an end to the blockade therefore eased considerably. At the end of September, the Allies had referred the problem to the United Nations. Still, U.S. policy makers viewed the crisis as a potential flash point, and continued to explore various approaches to a negotiated settlement.<sup>6</sup>

One solution recommended in mid-November by the head of the Policy Planning Staff in the State Department, George Kennan, envisioned the withdrawal of all occupation forces to the periphery of Germany, internationally supervised elections of a provisional German government, and safeguards against the emergence of extremist elements. Entitled "Plan A," it was viewed by Kennan as the only possible way to get

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<sup>6</sup>Although the U.S. had the atomic bomb, Truman and his advisers were divided on how to use it in case of war, or whether to use it at all. The build-up of U.S. conventional forces would not begin to show results until the following spring and summer at the earliest. General Clay felt that a conventional attack by the Soviets could be stopped at the Rhine, but other advisers were not so certain. Even the airlift had its critics who feared that the concentration of most of the U.S. strategic airlift capacity made it vulnerable to destruction in a single strike. Millis, ed., The Forrestal Diaries, pp. 451-70.



Russia to cooperate in withdrawing from Germany. With the occupation forces out of Germany, the Berlin problem would solve itself. Kennan felt that the plan could be used as an initial bargaining position of the Western Allies in any talks with the Soviet Union over the Berlin problem. If the Soviets rejected it, the onus for the breakdown would be on them, and the allies could fall back on the London Program.<sup>7</sup> The concept received a cool reception within the State Department; Clay and his adviser Robert Murphy were likewise unenthusiastic.<sup>8</sup> It was relegated to the back burner of German options, to be resurrected periodically over the next several months. In the meantime, policy planners were content to allow the London Program and the Berlin Airlift to follow their respective courses.

In January 1949 a new secretary of state and a change in the Berlin situation necessitated a further reappraisal of American policy in Germany. Dean Acheson replaced the ailing George Marshall at the State Department. Almost immediately, he directed that a long range policy towards Germany be drafted in order to facilitate negotiations with

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<sup>7</sup>For a text of "Plan A," see FRUS, 1948, Vol. II, pp. 1325-38.

<sup>8</sup>Within the State Department, Kennan's views were opposed by John Hickerson, Director of the Office of European Affairs, Jacques Reinstein from the Office of the Assistant Secretary of State for Occupied Territories, and Charles E. Saltzman, Assistant Secretary of State for Occupied Territories. Their common argument was that Plan A did not guarantee preventing the spread of communism and hence Soviet power into all of Germany and thereafter into the rest of Europe. Ibid., p. 1320, n. 1.

France and Britain on the German problem. To this end, a National Security Council subcommittee on Germany was formed, consisting of the Secretaries of State, Defense, the Army, and a representative of the Economic Cooperation Administration. The subcommittee established a steering committee made up of representatives of these officials, to be chaired by George Kennan. It was given the task of actually formulating policy.<sup>9</sup>

During February the State Department circulated several policy papers on Germany, and two distinct points of view emerged. Kennan still preferred an all-German solution as outlined in "Plan A." He felt that the establishment of a West German government would "crystallize a split Germany and freeze a dividing line through Europe from Lübeck to Trieste."<sup>10</sup> Regarding the establishment of a German government, Kennan recommended that the U.S. not bring pressure

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<sup>9</sup>FRUS, 1949, Vol. III, pp. 87-88.

<sup>10</sup>Robert Murphy, memorandum on conversation with Kennan's planning group, 10 February 1949, POLAD, Box 461, File 56. Murphy, in Washington briefly to discuss German policy with the State Department officials, disagreed with Kennan's proposal, suggesting that the "line had already been established through no fault of the Western Powers and that the creation of healthy conditions in Western Germany would not be to blame for the crystallization of that line." Kennan clearly opposed the solution offered by the London Program for the reasons outlined above, and because it was "intellectually and in concept the child of our occupational establishment in Germany," which he abhorred. Kennan, Memoirs, 1925-1950, p. 428.

on the Germans for greater decentralization "where it is clear that movement in that direction would weaken the capacity of the German people to resist pressures from totalitarian minority elements."<sup>11</sup>

A second view supported the policy of the London Program by pointing out the dangers of postponing the establishment of a West German state. It was argued that American and western prestige would suffer, German confidence would deteriorate, and leading political figures would be discredited, making it all the easier for Communist influence to spread. Only if postponement were accompanied by guarantees of a unified, western-oriented Germany could such a course be justified.<sup>12</sup>

At the beginning of March, no firm decision had yet been made on either course of action. To facilitate such a decision, Kennan was to be sent to Germany on a fact-finding tour, and an Office of German Affairs was to be established in the State Department as the first step in taking over full responsibility for Germany from the Defense Department.<sup>13</sup>

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<sup>11</sup>FRUS, 1949, Vol. III, p. 92.

<sup>12</sup>Ibid., pp. 195-96. This view appeared in a paper prepared in the Division of Research for Europe of the Office of Intelligence and Research, and circulated among members of the NSC subcommittee on Germany during mid-February 1949.

<sup>13</sup>Secretary of State Daily Meeting of February 28, 1949, National Archives, Record Group 59, Office of the Executive Secretariat, Box 1.

In February, the State Department undertook a further initiative, the impact of which would not be known until mid-March. Since formal negotiations had broken down the previous September over the Berlin problem, little progress had been made in the United Nations. Neither the Allies nor the Soviets had resumed face to face negotiations. The Stalin interview by Kingsbury Smith, which had contributed to speeding up the deliberations in Bonn, was seen by some State Department officials as a signal from Moscow that they might be willing to end the blockade.<sup>14</sup> To explore this possibility Acheson directed Dr. Philip Jessup, U.S. Representative to the United National Security Council, to approach unofficially the Soviet representative to the United Nations, Yakov Malik, to see if the Soviet position represented a departure from its previous stand. Jessup transmitted the inquiry on February 15, but no word had been received from the Soviets by the beginning of March.

During March, the pace in the State Department quickened perceptibly. Robert Murphy, Clay's State Department adviser, was recalled at the beginning of the month to head the newly created Office of German and Austrian Affairs. In a meeting with Murphy, Kennan (Director of the Policy Planning Staff),

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<sup>14</sup>Charles Bohlen, Witness to History, 1929-1969 (New York: W.W. Norton and Company, Inc., 1973), p. 283. Originally, the Soviets used the currency reform in the western zones as a pretense for the blockade. In the Smith interview, currency reform had not been mentioned as a condition for lifting the blockade, only the postponement of a West German government pending the outcome of a meeting of the Council of Foreign Ministers.

Dean Rusk (Assistant Secretary of State for United Nations Affairs), and deputy secretary James Webb on March 9, Acheson considered the various options available in Germany. Kennan argued against the present policy (the London Program), pointing out that the establishment of a West German government ran the risk of crystallizing German opinion along nationalistic lines. Moreover, based on progress thus far on the Occupation Statute and trizonal fusion, it seemed doubtful that the Western Allies would be able to coordinate their occupation policies effectively after the West German government came into being. Finally, he voiced his earlier concern that the London Program reduced the flexibility of the Allies in bringing about a solution to the Berlin problem. Kennan now recommended a provisional German administration with far greater powers than foreseen under the London Program, but with the final and unlimited power reserved to the Military Governors.<sup>15</sup> Acheson, while accepting Kennan's reasoning, rejected his solution. In the end, the group decided that progress toward the establishment of a West German government had proceeded too far and that a provisional arrangement was no longer feasible. If the Soviets did offer to lift the blockade in return for postponing the West German government, some other solution

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<sup>15</sup>For a full text of Kennan's proposal, see FRUS, 1949, Vol. III, pp. 96-102.

would have to be worked out.<sup>16</sup> Because of Kennan's impending trip to Germany, Acheson also decided to replace him with Murphy as head of the Steering Committee on Germany. A final, long-range policy would be worked out upon Kennan's return from Germany. In the meantime, Acheson directed Murphy to prepare a tentative agenda on German problems which Acheson could use should the necessity arise during the visit of the Foreign Ministers to sign the Atlantic Pact at the beginning of April.<sup>17</sup>

During Kennan's absence, the State Department developed and refined the guidelines set out in the March 9 meeting. On March 16, on the recommendation of the Steering Group, Acheson agreed to discuss Germany with the Foreign Ministers of France and Great Britain during their Washington visit.<sup>18</sup>

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<sup>16</sup>Although Acheson did not particularly like Kennan's proposal, he also had his doubts about the London Program. Murphy's notes of the meeting record that "the Secretary indicated that he did not understand how we ever arrived at the decision to see established a Western German government or state. He wondered whether this had not rather been the brainchild of General Clay and not a government decision." Murphy quickly reassured him that the decision had indeed been undertaken at governmental level, and reviewed the events that had led to the decision. Ibid., pp. 102-105.

<sup>17</sup>Ibid. Negotiations on the Atlantic Pact had been concluded on March 7, 1949, at which time a tentative signing date of April 4 was agreed upon. FRUS, 1949, Vol. IV, p. 174.

<sup>18</sup>FRUS, 1949, Vol. III, p. 105.

The basis of their discussion would be the Occupation Statute and trizonal fusion, neither of which the negotiators in London had been able to draft satisfactorily. The Basic Law would provide the third topic for discussion.

On March 23, Murphy delivered a new policy paper. While incorporating some of Kennan's earlier ideas, notably that the U.S. should not regard the degree of centralization or decentralization in the German government as a matter of major importance, the policy of the London Program was justified in the context of past and present developments. Whereas "Plan A" contained no guarantee that the resulting German state would be oriented to the West, the state envisioned by the London Program was to be integrated into the framework of Western Europe. It would provide a bulwark against communism while at the same time contributing to the general economic recovery of Western Europe. Far from weakening the Allied bargaining position vis à vis the Soviets over Berlin, a strong and viable West Germany would enhance it, simultaneously improving the chances for reunification "along lines compatible with U.S. policy."<sup>19</sup> Regarding the situation in Berlin, the paper argued that the lifting of the blockade was a major U.S. objective. If the Soviets demanded the postponement of a West German state pending a meeting of the Council of Foreign Ministers as a

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<sup>19</sup>For a text of the policy paper, see *ibid.*, pp. 118-31.

condition for lifting the blockade, Murphy recommended that such a postponement be rejected. However, since a German government was not projected for several months, he suggested that there would be sufficient time for a Council of Foreign Ministers in the interval. At such a meeting, the U.S. should press for a united Germany using the West German state as a model. If this proved impossible, then the U.S. should seek a modus vivendi by which the separate parts of Germany, including Berlin, could coexist peacefully with one another.

Kennan returned from Germany and reported to Acheson on March 29. Stressing that voluntary German participation in the development of Western Europe was vital, Kennan repeated his recommendation that the U.S. "should not press its federalization policy in the Basic Law."<sup>20</sup> On the basis of his report and Murphy's policy paper of March 23, the official U.S. policy toward Germany emerged. It was presented to President Truman on March 31, and served as the foundation for the U.S. position during the Foreign Ministers' meeting in April. The policy regarding the Bonn constitution was enunciated quite clearly.<sup>21</sup>

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<sup>20</sup>Ibid., pp. 137-38.

<sup>21</sup>Index of German Position Papers, Tab 2, Bonn Constitution, p. 8. National Archives, General Records of the Department of State, Record Group 59, 740.00119 Control (Germany) 3-3149.



If the question of approving the draft provisional constitution is raised in Foreign Ministers' discussions, it should be the U.S. position that the draft constitution in its present form is in principle acceptable. To insist with the French upon complete acceptance of the Military Governors' comments in the face of German reaction would probably result in refusal on the part of the Germans to collaborate further in the establishment of a democratic constitutional government in the West and thus place in jeopardy our entire German program.. It is therefore recommended that the U.S. take the position, in harmony with the British suggestion, that the German counterproposals may be accepted as satisfactorily meeting Allied requirements, with the exception that Article 22 be suspended with respect to greater Berlin. /Berlin was not to become the twelfth German Land.<sup>7</sup> It is believed important that the Parliamentary Council should not be pressed on these issues to the point that the constitution will appear in German eyes as an imposed document.

The path for the United States would have been difficult enough with no complications. On March 15, however, amidst the scramble in the State Department to arrive at a coherent German policy, the Russians suddenly replied to Philip Jessup's overture of February 15. Jessup was informed that Stalin's omission of any reference to the currency problem in his reply to Kingsbury Smith on January 31 had not been accidental.<sup>22</sup> In the course of the next two weeks, the Jessup-Malik conversations, as they became known, developed into a promising dialogue. As early as March 18, Acheson had approved a tentative basis for further talks. The U.S. would agree to lift its counterblockade as quid pro quo for the Soviets lifting their blockade. The West

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<sup>22</sup>FRUS, 1949, Vol. III, p. 696.

German government would not be postponed; however, Jessup was to tell the Russians that as long as the desired Council of Foreign Ministers took place in the near future, such a point would not be an issue, since a West German government was not projected for at least several months (the influence of this line of reasoning can be seen in Murphy's policy statement of March 23, mentioned above).<sup>23</sup> Secretary of State Acheson gave instructions that the talks be kept strictly secret; only a select few in the State Department were informed. For the present, the Department of the Army was among those excluded. Both the French and British were to be kept informed through the American embassies in London and Paris. Acheson planned to discuss courses of action with the French and British Foreign Ministers when they arrived in Washington for the signing of the Atlantic Pact.<sup>24</sup>

While a clear policy for Germany was finally emerging for U.S. decision makers, the executors of that policy, the Military Government in Germany, remained largely unaware of such momentous developments. General Clay, discouraged by the confusion in Bonn and the evident inability of the negotiators in London to reach an acceptable solution to the Occupation Statute and trizonal fusion, interpreted the lack of firm policy directives from Washington as

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<sup>23</sup>The essential developments of the Jessup-Malik conversations are contained in FRUS, 1949, Vol. III, pp. 694-751.

<sup>24</sup>Ibid., pp. 705-08.

indecision. His mood was reflected in a bitter message to Department of the Army on March 25,<sup>25</sup>

Recent events convince me that West German government will not result. French delaying tactics have won and sentiment has now strongly turned against West German government. This stems largely from failure to develop tripartite common policy....It looks like we start again from scratch and for the moment I cannot see ahead. Politically, I think we have lost heavily but we only have ourselves to blame. I hope I am unduly pessimistic.

Had Clay been aware of the trend in the State Department, it is unlikely that his spirits would have improved. Clay had been intimately involved in German occupation and recovery since his assignment as General Eisenhower's deputy for military government in 1945. He had played a decisive role in the events leading to the establishment of the Bizone. Appointed military governor and commander-in-chief of the U.S. military forces in Europe in March 1947, he had continued to press for increased responsibility and participation by the Germans in their own economic and political rehabilitation. In this respect, he had firm beliefs on how this was to be accomplished. Committed to the economic recovery of Germany as a means of saving American tax dollars as well as providing a healthy political climate for German democracy, Clay was an outspoken advocate of private enterprise.<sup>26</sup> In his view, socialism threatened the economic

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<sup>25</sup>Clay Papers, II, Item 695, p. 1062.

<sup>26</sup>Clay Papers, I, p. xxix.

recovery in Germany and Europe as a whole, and he endeavored to postpone or delay any action on the part of the American Zone Germans that might predispose them to socialism, pending the formation of a German government.<sup>27</sup> When this occurred, the government could decide the issue itself.<sup>28</sup> Partly because of these views, and partly because of his own southern heritage, he was a strong believer in a federal system of government.<sup>29</sup> The March 2 memorandum, although certainly a reflection of French distrust of a strong central German government, also accorded closely with Clay's own views; he was determined to see that the Germans abided by the suggestions contained therein.<sup>30</sup>

With this in mind, it is hardly surprising that Clay and the Social Democrats would come into conflict. Actually, Clay and the more moderate leaders of the SPD like Ernst Reuter and Wilhelm Kaisen got along very well. With Kurt Schumacher, it was a different matter. Clay saw Schumacher's authoritarian control of the party as a potential threat to

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<sup>27</sup>Clay's aversion to socialism is well documented. See Middleton, The Struggle for Germany, pp.130-31, p. 215; Walter Millis, ed., The Forrestal Diaries (New York: The Viking Press, 1951), p. 526.

<sup>28</sup>The best example of Clay's view, in his own words, is contained in his explanation of the OMGUS disapproval of co-determination in South Baden in January 1949. Clay Papers, II, Item 637, pp. 989-90.

<sup>29</sup>Murphy, Diplomat Among Warriors, p. 289; Clay Papers, I, p. xxxi.

<sup>30</sup>Clay Papers, II, Item 701, pp. 1066-68.

democracy.<sup>31</sup> To him, Schumacher was an uncompromising fanatic, "possessed of only one arm but a dozen elbows,"<sup>32</sup> and as such unsuitable to become Germany's first postwar leader. Notwithstanding Clay's opinion that the overall responsibility for the present crisis in Bonn lay with the Western Allies, he also felt it was the SPD within the Parliamentary Council who were holding up developments there.<sup>33</sup>

To add to Clay's depression at the end of March was his correct perception of George Kennan's views that the U.S. should not force the Germans to accept an exaggerated federal system, of which he was apprised prior to Kennan's departure. Kennan had been thoroughly disgusted at the lack of tripartite cooperation he had experienced during his short stay, but even more appalling to him were the inappropriate and conspicuous consumption of the military occupation itself, a situation which, he later admitted, clouded his judgment on a proposed course of action in Germany.<sup>34</sup>

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<sup>31</sup>Clay Papers, II, Item 702, p. 1077.

<sup>32</sup>Edinger, Kurt Schumacher, p. 184. Schumacher had lost his right arm during World War I.

<sup>33</sup>Clay Papers, II, Item 701, p. 1067

<sup>34</sup>Of the occupation, Kennan wrote: "This was an establishment for which I had an almost neurotic distaste. I had been twice in Germany since the termination of hostilities. Each time I had come away with a sense of sheer horror at the spectacle of his horde of my compatriots and their dependents camping in luxury amid the ruins of a shattered national community, ignorant of the past...flaunting

In one important area, Clay was able to gain some encouragement. Robert Schuman, the French foreign minister, had consistently supported a more liberal policy toward Germany (the London Program had been approved under his premiership). During March, as tempers flared between the Allied negotiators in London over the finer points of the Occupation Statute and trizonal fusion, Schuman showed his concern by requesting a personal meeting with General Clay to clear up the major differences between the two Allies.<sup>35</sup> Clay was reluctant to go, but acquiesced to the request of the State Department.<sup>36</sup> The two met unobtrusively in Paris on March 20 and discovered, to their mutual satisfaction, that their views on Germany did not differ markedly. Schuman had for some time recognized the necessity for integrating Germany into the Western European Community. Like Clay, he understood the desirability of a short, relatively non-restrictive, Occupation Statute. He agreed to review his government's position on this as well as on

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their silly supermarket luxuries in the face of a veritable ocean of deprivation...." Memoirs, 1925-1950, pp. 428-29.

<sup>35</sup>"French Anger U.S. by German Delay," NYT, March 18, 1949, p. 1.

<sup>36</sup>Clay's reluctance stemmed not from his unwillingness to talk with Schuman, but rather from his uncertainty at the time of what policy the U.S. was pursuing in Germany. Secretary of State, Daily Meeting of March 15, 1949, Office of the Executive Secretariat, Summaries of the Secretary's Daily Meetings, 1949-59, Box 1.

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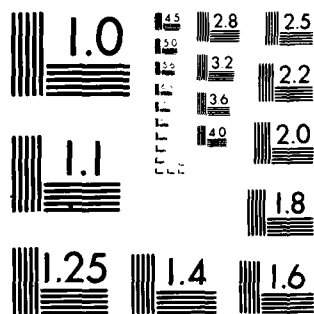
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trizonal fusion, an area in which up to now French negotiators had been unwilling to consider relinquishing unilateral control of their zone. Clay was satisfied with the results of the meeting, but was somewhat skeptical of Schuman's ability to implement his views. In his report of the meeting, he commented: "Meeting was most friendly and cordial. Whether Mr. Schuman can carry out his views remains to be seen, as hitherto his subordinates in France and Germany have successfully sabotaged his effort."<sup>37</sup>

From past experience, Clay's skepticism was justified. Since the preceding summer, France had been wracked by government instability and labor unrest. Schuman, who had headed the government at the time of the London Six-Power Conference, was ousted on a vote of no confidence in July 1948. Two more governments followed in rapid succession before a coalition government under Radical Socialist Henri Queuille was able to reestablish a tenuous hold on political authority. Austerity measures initiated to balance the budget and stem inflation brought on a wave of strikes and labor violence that continued unabated until the end of November. The government continued the German policy of its predecessors as set forth in the London Program. (Schuman held the position of Foreign Minister in all three of the governments which followed his own fall.) De Gaulle

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<sup>37</sup>Clay Papers, II, Item 691, p. 1058.

had opposed that policy from the beginning and had established a political base from which he hoped to come to power once more.

Indeed, French policy in Germany as implemented by the French military government did not always reflect the principles agreed to in the London Program.<sup>38</sup> General Pierre Koenig was a loyal supporter of De Gaulle, having served with him since the bleak days of 1940. Whereas Robert Schuman sought security for France through economic recovery and strengthened ties to its Allies, Koenig and his advisers favored De Gaulle's view that security could be best served by maintaining and exploiting Germany's weakness.<sup>39</sup>

At the beginning of 1949 the Queuille government was still in power, the worst of its labor problems behind it. The agreement on the International Authority of the Ruhr in December had done much to reassure the French that the Ruhr's industrial might would not be used against them in the near future. The discussions on the North Atlantic Pact were also progressing, adding further reassurance. The Communists had been largely discredited as a result of their role in the previous year's labor unrest, and more recently by their leader's ill-advised remarks before the National

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<sup>38</sup>Tint, French Foreign Policy, p. 46; Schwarz, Vom Reich zur Bundesrepublik, p. 192.

<sup>39</sup>Golay, The Founding of the Federal Republic of Germany, p. 97.

Assembly.<sup>40</sup> As Schuman departed for the Foreign Ministers' Conference in Washington, local elections further strengthened his hand. On March 19 and 26, voters in some 1500 localities went to the polls to elect representatives to their provincial legislatures. Government coalition party candidates won almost half of the available seats (747 out of 1508). The Gaullist parties, although gaining considerably, did not achieve the mandate necessary to justify the calling of national elections. The Communists lost heavily, electing a total of only 37 candidates.<sup>41</sup>

De Gaulle had maneuvered himself into a corner during the campaign by publicly stating that he would assume power only by legal means. Since he could not now justify calling for immediate national elections, he would have to await the regularly scheduled national elections in 1951. The government coalition thereby gained a breathing spell, and most knowledgeable observers foresaw a prolonged period of moderate rule.<sup>42</sup>

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<sup>40</sup>The French Communist Leader, Maurice Thorez, had replied to a question of "What would you do if the Red Army were to occupy Paris?" by answering, "If our people were drawn against their will into an anti-Soviet war, and if the Soviet Army, in defense of the peoples' cause and that of Socialism, were obliged to pursue the aggressor on to our territory, could the behavior of the workers and the people of France be any different from that of the workers and peoples of Poland, Rumania, etc?" NYT, February 27, 1949, Sec. IV, p. 2.

<sup>41</sup>"French Election Results," Times (London), March 29, 1949, p. 4.

<sup>42</sup>"General De Gaulle and the Pact," Times (London), March 30, 1949, p. 4; "Support for 'Third Force' is Key to French Politics," NYT, March 27, 1949, Section IV, p. 5.

In Britain, Foreign Minister Bevin's policy of drawing the United States closer to its allies in Europe was gradually bearing fruit.<sup>43</sup> Economic assistance had been gained through the implementation of the Marshall Plan; military assistance was foreseen as progress was made toward a North Atlantic Pact. Regarding Germany, Britain and the United States had been cooperating closely since mid-1946 when efforts were begun to unite their zones of occupation. Britain had also taken a firm stance on the Berlin question. In fact, Bevin seemed much less concerned about resolving the crisis there than was the United States, a factor which would have an effect on the events to come in April 1949.<sup>44</sup> In the area of the Basic Law, however, the British views diverged markedly from those of the United States. From the beginning, the British had favored a more centralistic approach than either the Americans or the French.<sup>45</sup> For the sake of Allied unity, they had usually acceded to the desires of the United States. With the receipt of the February 10 draft, however,

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<sup>43</sup>Watt, Britain Looks to Germany, p. 54.

<sup>44</sup>Bevin's motives in this respect are unclear. That he may have viewed the crisis as a means of insuring U.S. participation in the Atlantic Pact is suggested by F.S. Northedge, British Foreign Policy, The Policy of Readjustment 1945-1961 (London: George Allen & Unwin Ltd., 1962), p. 94.

<sup>45</sup>Kirkpatrick, The Inner Circle, p. 21.

Britain was concerned and disappointed with the number of reservations voiced by the French and Americans.<sup>46</sup> In the February 16 meeting between the Military Governors, General Robertson pointed out that the draft represented a fragile compromise between the two major parties, and that any further tampering on the part of the Allies might endanger the entire process.<sup>47</sup>

Nevertheless, the British reluctantly agreed to go along with the U.S. and French objections. The only article that they actively opposed was the one concerning the civil service. With the adverse German reaction to the March 2 memorandum, the British fervently hoped that some compromise could be achieved between the Allies and the Germans. As the German proposal of March 10 was rejected, these hopes faltered. Following the delivery of the March 17 proposals, General Robertson wrote to Clay on March 20:<sup>48</sup>

I do not know, of course, what view you and Koenig take of the new texts which the Germans have now put forward. My feeling is that a lot of pressure has been brought to bear on the

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<sup>46</sup>"Constitution of West Germany," Times (London), March 3, 1949, p. 4.

<sup>47</sup>FRUS, 1949, Vol. III, p. 202.

<sup>48</sup>Letter from General Robertson to Clay, March 20, 1949, OMGUS, Office of the Chief of Staff, Office File of General Lucius D. Clay, Box 2, File 15.

Germans during the past fortnight. In order to go along with you two I have been content that my liaison officer should participate and show a common front. I feel now that a point has been reached where the SPD representatives are not going to make further concessions without being disowned by their own party....Therefore I do not want to join in further pressure on the Germans.

Once Robertson learned of Clay and Koenig's negative reaction to the March 17 proposal, he recommended that the Allied rejection be couched in the most general of terms in order to soften its impact on the Germans.<sup>49</sup> This was done, but the negative impact could hardly be avoided.

The view of the British government was almost identical to Robertson's. In an aide-memoire forwarded to the State Department through the U.S. embassy in London on March 25, the Foreign Office summarized the major points of contention between the Germans and the Allies, then concluded by stating:<sup>50</sup>

On these three points [financial equalization, financial powers of the states and the federation, and legislative powers of the two] Social Democrats are in favor of a more centralist solution than French Military Governor, and probably U.S. Military Governor, is willing to accept. British view is that no further pressure should be brought to bear upon the SPD to give way on these three points, since such pressure would probably lead to break up of SPD-CDU compromise

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<sup>49</sup>Ibid., Letter from General Robert to General Koenig, March 22, 1949, copy forwarded to General Clay.

<sup>50</sup>FRUS, 1949, Vol. III, p. 229.

upon which whole Basic Law is founded...in circumstances it seems mistaken policy to imperil whole of our German program by compelling both CDU and SPD to give us satisfaction on these three points, particularly since in respect of other observations made by Military Governors, Germans have given us satisfaction.

As the Foreign Ministers arrived in Washington at the end of March, a semblance of unity existed on both the German and Allied side, the fragility of which would soon be revealed. In the Parliamentary Council, the two major parties had agreed to stand by the February 10 draft. The SPD, led by Kurt Schumacher, confidently believed Allies would not risk their German policy by rejecting the Basic Law. The CDU/CSU was wavering, however, and a firm stand by the Allies might well cause it to reverse its position once more. Among the Allies, the views held at government level by the British and the American regarding the Basic Law were remarkably similar. The French government had a freedom of action it had not enjoyed since its formation after the war. Since Robert Schuman was a strong believe in European integration, agreement between the Allies seemed finally to be within the realm of possibility.

At the operational level of the military governments, General Robertson alone was in concert with the policy of his government. Koenig did not support the London Program, but with his base of support eroded by the March elections, he could be expected to go along with his government's

German policy, albeit reluctantly. General Clay could be counted on to carry out his government's policies. At this point, however, Clay was unsure of what his government's policy was. Until they informed him, he would continue to pursue the policy for which he had been largely responsible, and over which he had labored for the past eight months. The Basic Law was not yet assured.



## CHAPTER IV

### I. Parliamentary Council, April 1949

April opened with a flurry of activity in the Parliamentary Council. The SPD was now determined to push through the revised draft of the Basic Law. The Allied liaison officers conferred with Council leaders on April 1, trying to quash the rumors of the preceding week that the March 25 stand of the Allies was a bluff.<sup>1</sup> They were successful to the extent of persuading the CDU/CSU to return to their position of March 30. The SPD was undaunted, however, and with the backing of the FDP was able to pass a motion calling for a meeting of the Main Committee on April 5 to consider the formal acceptance of the March 17 proposals of the Committee of Seven.<sup>2</sup>

The switch by the CDU/CSU was not surprising, nor was the stance taken by the SPD and FDP. In a concise and perceptive analysis of the political situation in the Parliamentary Council, a U.S. liaison officer wrote:<sup>3</sup>

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<sup>1</sup>Strauss, "Die Arbeit des Parlamentarischen Rates," p. 164; "Kritische Lage in Bonn," Neue Zeit (Berlin), April 2, 1949, p. 1.

<sup>2</sup>Clay Papers, II, Item 705, p. 1086.

<sup>3</sup>Unsigned memorandum, probably by Hans Simons, April 1, 1949, OMGUS, CAD, Box 466, Folder 3.

The SPD is playing for what it believes to be big stakes and the party is now at work to start a war of nerves with the Allies. They are convinced that their entire socialization program depends upon strong federal powers in the field of finance and, above all, firm control of the purse strings. Speed is deemed essential because the party believes that it must have the socialization program well under way before too much private U.S. capital can invade the West and endanger its success. Moreover the SPD believes that any further concessions to Allied intervention will invite strong attacks from the Communists. Against this mighty array of fire power the CDU/CSU presents a weakly united front. The parties are in favor of meeting the spirit of the Allied memorandum, however, for different reasons. The CDU is mainly thinking in terms of Allied approval or disapproval, whereas the CSU is strongly convinced that federalism itself and the party's future is at stake.

At this point the FDP was still supporting the SPD, but hardly because of the SPD stand on socialization. Like the SPD the FDP favored a more centralized federal government. Moreover, some CDU/CSU observers felt that FDP motives were politically oriented: the SPD had allegedly promised the FDP the federal presidency in the future government in return for their present support.<sup>4</sup>

Over the weekend (April 2 and 3) the party leaders in the Council continued to confer, trying to reach some kind of understanding. Both major factions reminded each other of the necessity of passing the Basic Law with a large majority.

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<sup>4</sup>This opinion was recorded by Anthony Pabsch, another U.S. liaison officer, after an interview with Adenauer's secretary, Herbert Blankenhorn, "Highlight Summary of Parliamentary Council Actions," March 4, 1949, *ibid*.

The SPD tried to convince the CDU/CSU that the Allies actually would approve the March 17 position if the parties held firm; the CDU/CSU replied that the Allied rejection of March 25 clearly disproved this.<sup>5</sup> On April 5, prior to the scheduled session of the Main Committee, the liaison officers delivered a message from the three Foreign Ministers meeting in Washington. The Ministers informed them that they were gratified that the completion of the Council's labors was near. There was no modification of the stance taken by the Military Governors on March 2. On these issues, the Ministers expressed their trust "that the Parliamentary Council and the responsible German party leaders will give due consideration to the recommendations of the Military Governors, which conform with the provisions of the London Agreement."<sup>6</sup>

The message was a definite blow to the SPD which had obviously hoped for something more favorable. Nevertheless, in the Main Committee session on the afternoon of April 5, they moved to approve the proposals of March 17 as planned. This time, however, the FDP sided with the CDU/CSU, and the motion was defeated 12-9. The CDU/CSU then introduced a motion to continue the debate on the following day in order to allow time for a closer examination of the message from the Foreign Ministers.<sup>7</sup> The motion was passed and the session of April 5 adjourned.

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<sup>5</sup>"Am Vorabend der Vierter Lesung," Neue Zeit, April 5, 1949, p. 2.

<sup>6</sup>DCGFC, p. 115.

<sup>7</sup>"Foreign Chiefs Caution Germans," NYT, April 6, 1949, p. 9.

Before the next day's session, the CDU/CSU finally decided to implement their resolution of March 30. This step was undertaken with considerable misgiving. Introducing new financial proposals meant abandoning the great compromise of February, leaving the faction open to criticism from the SPD. Moreover, as Adenauer expressed it, there was "still a chance that the Allies might in the end acquiesce" (to the demands of the SPD), a situation which would have calamitous consequences for the CDU/CSU in any election campaign that might follow.<sup>8</sup> Despite these considerations, the CDU/CSU introduced new financial recommendations during the April 6 meeting of the Main Committee. The financial powers of the Länder were to be increased, and the powers of the Bundestag correspondingly decreased. Theodor Heuss, leader of the FDP, moved that the proposals be referred to the Finance Committee for further study. In the ensuing vote, the motion was carried against the opposition of the SPD, 12-9, with the FDP once again siding with the CDU/CSU.<sup>9</sup>

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<sup>8</sup>Heidenheimer, Adenauer and the CDU, p. 171.

<sup>9</sup>Golay, The Founding of the Federal Republic of Germany, p. 104; FRUS, 1949, Vol. III, p. 236. Peter Merkl maintains that the realignment of the FDP with the CDU/CSU at this point was the decisive factor which ultimately forced the SPD to compromise with the other parties (The Origin of the German Federal Republic, p. 101). Available sources do not support this contention. Certainly the FDP move prevented the SPD from pushing the March 17 proposals through the Main Committee on April 5, which conceivably might have placed the Military Governors in the difficult position of having to reject the proposals officially. As will be seen, however, other factors beside the FDP encouraged the SPD to be conciliatory later in the month.

Foiled in its attempt to have the March 17 proposal incorporated into the Basic Law draft, the SPD declared that they could make no further concessions. Of greater importance was their announcement that, because of the new position of the CDU/CSU, they no longer felt bound by the party compromise of early February.<sup>10</sup> When the Finance Committee convened on April 7, the SPD attended only as observers and refused to take part in the proceedings. Carlo Schmid and Walter Menzel defended the faction's actions, saying the new situation demanded careful consideration. The party headquarters in Hanover scheduled a meeting for the following Sunday and Monday (April 10 and 11) at Bad Godesberg for the purpose of working out a new approach for the party delegation in Bonn.<sup>11</sup>

Little could be accomplished in the Parliamentary Council without the participation of the SPD. For the time being the Main Committee suspended its work until the results of the meeting at Bad Godesberg were known. An indication of what would unfold was given on April 8 when Kurt Schumacher informed the press that the party would discuss abandoning the existing Basic Law draft altogether in favor of a less complicated document. Comparing the present policy of the

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<sup>10</sup>"Bonn sucht einen neuen Kompromiss," Neue Zeitung, April 7, 1949, p. 2.

<sup>11</sup>"SPD schafft neue Situation in Bonn," Neue Zeitung, April 8, 1949, p. 1.

Allies to Napoleon's Confederation of the Rhine, Schumacher warned that the Allies risked driving the Germans into the arms of the Communists if they persisted.<sup>12</sup>

In another development, which understandably did not receive wide circulation, the British liaison officer to the Parliamentary Council, Chaput de Saintonge, privately confirmed to the CDU on April 8 that the British Military Government would approve no Basic Law that was not acceptable to the SPD. This information was passed on to the U.S. liaison officer, Hans Simons, for the American reaction. Simons declined to comment but informed his superiors immediately.<sup>13</sup>

On April 9, the press announced the results of the Foreign Ministers' meeting in Washington. The Western Allies had achieved "complete agreement" on the "whole range of issues now pending in connection with Germany."<sup>14</sup> On the following day the Allied liaison officers delivered to the Parliamentary Council another personal message from the Foreign Ministers, accompanied at last by the text of the

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<sup>12</sup>"Dr. Schumacher and Bonn," Times (London), April 9, 1949, p. 3.

<sup>13</sup>Daily Political Report of April 11, 1949, OMGUS, CAD, Box 254a, File 2. According to the report, Adenauer had heard of Saintonge's statement and sent his secretary, Blankenhorn, to confirm it. Saintonge told Blankenhorn initially that the statement expressed only his personal opinion. Blankenhorn requested an official confirmation or denial. Saintonge called him on April 8 to confirm that the statement "represented the attitude of his military government."

<sup>14</sup>The official communique is contained in DCGFC, p. 115.

Occupation Statute.<sup>15</sup> In presenting the Occupation Statute the Foreign Ministers expressed hope for the future when Germany would be closely integrated within the framework of a European association. The message concluded with a gentle reminder that improved relations could be theirs as soon as agreement was reached in the Council on the Basic Law. Unlike the April 5 message, no reference was made to the guidelines set forth in the London Agreements.

Initial reaction to this message in the Council was guarded as a forty-eight hour hold was declared on all public comment until the Statute could be examined. Privately, most Bonn leaders saw the Statute as a substantial step forward.<sup>16</sup> It is significant, however, that the SPD interpreted it as justification for their firm position on the Basic Law as set forth in their March 30 resolution.<sup>17</sup>

For all the earlier German anxiety, the Occupation Statute did not necessitate any major changes to the Basic Law draft. The document itself consisted of nine articles,

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<sup>15</sup>The text of the message is contained in *ibid.*, pp. 116-17.

<sup>16</sup>The Germans viewed the statute as a potentially flexible document, depending on the spirit in which the Allies implemented it. Adenauer, *Memoirs, 1945-1953*, p. 132; Schmid, *Erinnerungen*, p. 392.

<sup>17</sup>Schmid wrote in his memoirs: These agreements were now considerably more reasonable than those fragments which we earlier were able to learn of. Obviously our efforts for understanding had had some success with the Allies. *Erinnerungen*, p. 392.

granting the West German state full legislative, executive and judicial powers in accordance with the Basic Law, subject to certain limitations. The Allies reserved powers in the areas relating to disarmament and demilitarization, control of the Ruhr and reparations, foreign affairs, foreign trade and exchange, displaced persons and refugees, protection of Allied forces personnel and their dependents, and respect for the Basic Law. Even in these restricted areas, the Germans could act after approval of the occupation authorities. Amendment of the Basic Law would require the express approval of the occupation authorities also. The Allies could, in an emergency, resume partial or full authority if it was essential for their security or for the preservation of democracy. The occupation authorities would review the document after twelve months "with a view to extending the jurisdiction of the German authorities in the legislative, executive and judicial fields."<sup>18</sup>

Fortunately or otherwise, attention was temporarily diverted from the Occupation Statute to the SPD meeting in Bad Godesberg. On April 11, the SPD leadership decided to discard the Basic Law draft of February 10. The new financial proposals of the CDU/CSU were rejected and it was agreed that the SPD would propose a shortened, less complicated version of the Basic Law in the near future. Final decision on the

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<sup>18</sup>The text of the Occupation Statute is contained in DCGFC, p. 116.



new draft was deferred pending the convening of a more representative segment of the party leadership in Hanover on April 20.<sup>19</sup> This last move was dictated by the lack of unanimity among the SPD leaders at Bad Godesberg. Erich Ollenhauer, Schumacher's personal representative at the meeting, realized that if a vote were taken on the new draft at Bad Godesberg, it stood a good chance of rejection. The party convention scheduled for April 20 would have a broader representation of SPD leaders, and most important, would be presided over by Kurt Schumacher himself.<sup>20</sup>

The SPD action was a definite setback for the CDU/CSU faction in the Parliamentary Council. In effect, it delayed any further action on the Basic Law until the SPD met in Hanover to make a final decision on their proposed short draft. It also injected a new, uncertain element into the proceedings by offering an entirely new draft Basic Law. At least with the present version (of February 10) most of the issues had been resolved in a manner acceptable to both sides. Extensive revision would involve further debate and thus further delay. Even more dangerous, it would strain the already tenuous relationship between the CDU and CSU, especially if the new SPD version excluded the articles

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<sup>19</sup>"Bonn Constitution Disowned by Social Democrats," Times (London), April 12, 1949, p. 4.

<sup>20</sup>Daily Political Report of April 12, 1949, OMGUS, CAD, Box 254a, File 2.

dealing with religious and cultural issues which the CSU had vigorously supported. On April 12, before it even had a chance to review the SPD draft, the CDU/CSU declared it would have nothing to do with it.<sup>21</sup>

At this point the FDP came forward with a proposal to try to break the deadlock. They reintroduced the concept of a popularly elected senate with equal powers to the Bundestag, or lower house. A Länder chamber would also be established to represent the interests of the Länder but would have no legislative function. It was hoped that this recommendation would allow the SPD to approve a divided financial administration.<sup>22</sup> This effort was in vain, however, as the SPD refused to consider it.

On April 14, a delegation from the Parliamentary Council, headed by Adenauer, met with the Military Governors in Frankfurt to discuss questions concerning the Occupation Statute. The questions to be posed by the delegation had been agreed upon in advance to avoid a repetition of the December incident.<sup>23</sup> General Clay presided over the meeting

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<sup>21</sup>"German Premiers on the Statute," Times (London), April 13, 1949, p. 3.

<sup>22</sup>"Besatzungsstatut leitet Souveränität ein," Neue Zeitung, April 13, 1949, p. 1.

<sup>23</sup>Adenauer, on the day before the meeting, confided to Hans Simons that the SPD would only discuss the Occupation Statute. However, if the Military Governors initiated questions on the Basic Law, "the SPD will of course participate in the discussion." Hans Simons, memorandum to Dr. Edward Litchfield, April 13, 1949, OMGUS, CAD, Box 458, Folder 1.

for the Military Governors. After discussing the questions posed by the Germans on the Occupation Statute, Clay asked them for a progress report on the Basic Law. Walter Menzel replied that the proceedings were presently at a standstill as a result of the rejection of the March 17 proposals by the Military Governors. Eventually both sides agreed to meet again on April 25 in order to allow some reaction time after the SPD meeting at Hanover on April 20. General Clay explained to the delegation that new proposals for the Basic Law should be presented to the Military Governors at that time, before being submitted to a plenary session of the Parliamentary Council. Clay was careful to stress that the Military Governors would be in a position to negotiate, but that the Germans must also come forward with some new proposals. Clay added that, although it would be helpful if the delegation arrived with a unified position on all issues, issues not resolved by the April 25 meeting could be resolved among the participants at that time. Adenauer and the other delegates agreed to this proposal, after which the meeting adjourned.<sup>24</sup>

The Allies and the Germans could do little until the SPD convention on April 20. The press conjectured that the meeting might turn out against Schumacher's hard line position against the Allies, since in recent weeks some dissatisfaction

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<sup>24</sup>A report of the meeting is contained in Clay Papers, II, Item 713, pp. 1107-11.

had been noted within the ranks of the SPD hierarchy. Among the leaders who would attend were numerous Land officials who were not as dependent upon the party directorate in Hanover for their positions as were the SPD delegates to the Parliamentary Council (the Land officials had been elected to their positions, while the delegates had been selected directly by the party). Press reports emphasized that some influential SPD leaders like Wilhelm Kaisen of Bremen and Ernst Reuter of Berlin were known to oppose the firm stand against the Allies taken by Schumacher.<sup>25</sup> Kaisen was one who was especially concerned. Like Adenauer, he felt that an imperfect constitution was better than no constitution at all, and that subsequent amendments could correct any present deficiencies (as noted above, the Occupation Statute granted the Germans this opportunity). Schumacher supporters argued that the French would be likely to block any such attempt at amending the Basic Law. Moreover, they stressed that the British had assured the SPD that the degree of centralization desired by them would be accepted by the Allies. Nevertheless, Kaisen held to his more flexible position,

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<sup>25</sup>"Compromise Seen on West Germany," NYT, April 15, 1949, p. 2.

unwilling to risk an outright Allied rejection of the Basic Law.<sup>26</sup>

The April 20 meeting is still shrouded in mystery and controversy. For Kurt Schumacher it represented his first public appearance in almost a year, and his presence no doubt affected the outcome most decisively. The great mystery involves Schumacher's motives for adopting the position that he did. Most admirers have contended that his determination to stand up to the Allies was due solely to his strong political principles. The SPD could simply not participate in a form of government which did not have adequate powers to implement its policies. According to this view, Schumacher realized the risk involved in taking the anti-Allied stance, but was personally convinced that the Allies would not reject the SPD demands.<sup>27</sup> Some admirers and many detractors feel that political tactics were his major motivation, that he realized a victory over the Allies would give the SPD a tremendous advantage over the rival CDU/CSU in the upcoming

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<sup>26</sup>Kaisen's views are recounted by Walter Dorn, a former OMGUS official who spoke with him at length on April 15, 1949. Dorn was conducting a fact-finding tour under the auspices of OMGUS during late March and early April, and later reported personally to Clay. Walter Dorn, Inspektionsreisen in der U.S. Zone, trans. Lutz Niethammer (Stuttgart: Deutsche Verlags-Anstalt, 1973), pp. 165-69.

<sup>27</sup>Foremost of the favorable works on Schumacher is the previously noted three volume set by Arno Scholz, Turm-wächter der Demokratie. Scholz insists that Schumacher never would agree to a course of action which he himself could not fully represent. "He made no compromise out of tactical

elections, where he stood a good chance of becoming chancellor.<sup>28</sup> The controversy referred to sprang up after the delivery of the April 22 Foreign Ministers' message, when the CDU/CSU accused Schumacher and the SPD of having prior knowledge of its contents, which were widely interpreted as giving in to the SPD demands. The SPD, in other words, had stood up to the Allies on April 20 confident in the knowledge that the Allies would eventually back down.<sup>29</sup>

While it is not within the scope of this paper to discuss these particular issues (especially since to this day they have not been satisfactorily resolved), it is instructive to examine the outcome of the meeting. It is well documented

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consideration" (Vol. I, p. 207). According to Lewis Edinger, Schumacher perceived himself as the model of the German patriotic leader, who had the grave responsibility of opposing any capitalistic interests which conflicted with German interests (Kurt Schumacher, p. 185). He was convinced that only the "insistent demands of a militant patriotic leader could make foreign powers revise their position in favor of the Germans" (Edinger's words, *ibid.*, p. 170).

<sup>28</sup>Brandt and Löwenthal, in their biography of Ernst Reuter, explain that Reuter misinterpreted Schumacher's position as a "propagandistically oriented starting point for new negotiations" in the Parliamentary Council, rather than a mere challenge to Allied authority. According to the authors, Reuter himself came to recognize this later. Ernst Reuter, p. 488.

<sup>29</sup>Adenauer's version of the controversy is contained in his Memoirs, 1945-1953, pp. 172-75. For Carlo Schmid's rebuttal, see Erinnerungen, pp. 392-395. Arno Scholz claims that Schumacher himself had no knowledge of the contents of the message, Turmwächter, Vol. I, p. 221.

that Schumacher's proposed course was opposed by several SPD leaders, notably Ernst Reuter and Wilhelm Kaisen.<sup>30</sup> Representing the moderate wing of the party, they argued that the SPD must not exclude the possibility of achieving an agreement on the Basic Law with the Military Governors. Left wing leaders were concerned for purely tactical reasons, fearing that if Schumacher's actions led to a flat rejection by the Allies, the party might alienate a portion of their electorate.<sup>31</sup>

A pivotal figure at the meeting was Carlo Schmid, the head of the SPD delegation and chairman of both the Main Committee and the Committee of Seven in the Parliamentary Council. Because Schmid was from the French zone, he was not tainted (in Schumacher's eyes) by association with the U.S. occupational authorities as were Kaisen and Reuter. Schmid was a trusted confidant of Schumacher, but had also managed to pursue a fairly independent line in the Parliamentary Council (as evidenced by his role in the Frankfurt Affair when he had defied Schumacher's wishes to introduce a vote of no confidence against Adenauer). The Americans viewed him as a moderating influence in the Party, and were hopeful

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<sup>30</sup>Schmid, Erinnerungen, p. 39; Brandt, Ernst Reuter, p. 488. Another indication of the differences in opinion which existed is shown by the subsequent resignation from the party of Fritz Löwenthal, an SPD delegate to the Parliamentary Council who disagreed with Schumacher's stand of April 20. Otto, Das Staatsverständnis des Parlamentarischen Rates, p. 46.

<sup>31</sup>James Riddleberger, telegram to Secretary of State, April 22, 1949, Department of State Decimal File 1945-49, 862.011/4-2249.

that he would be able to steer Schumacher toward a more flexible course.<sup>32</sup>

In this respect, American hopes were not fulfilled. Schumacher was able by sheer force of will to persuade most of the SPD leaders to support his position, which was adopted by a vote of 63 to 4, with 8 abstentions.<sup>33</sup> In the final resolution, the SPD blamed the intervention of the Occupation Powers and the collaboration of the CDU/CSU for the present deadlock in the Parliamentary Council. The SPD would reject the Basic Law if any one of six conditions were not met:

- 1) the Germans must have the freedom of action to decide on a Basic Law, without intervention by the occupying powers;
- 2) the Basic Law itself would have to be reduced to its essentials;
- 3) the powers of the Bundesrat were to be reduced substantially;
- 4) the Federation must be given the financial "means and opportunities" to carry out its responsibilities;
- 5) financial equalization between the Länder would have to be guaranteed; and
- 6) and there would have to be guarantees to maintain legal and economic unity in all spheres, especially in legislation.

On April 21, copies of the short draft were distributed to the Allied liaison officers and representatives of the other German parties.<sup>34</sup>

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<sup>32</sup>Clay Papers, II, Item 717, p. 1114; a timely article on Schmid extolling his political virtues is contained in Der Spiegel, 3 (March 12, 1949) #11, pp. 3-5.

<sup>33</sup>The text of the SPD resolution is contained in DCGFC, p. 134.

<sup>34</sup>The text of the SPD draft is contained in ibid., pp. 118-31.



The Allies found the SPD draft, despite the strident tones of the party resolution, closer to the guidelines of the March 2 memorandum than the March 17 proposals.<sup>35</sup> The main objections to the resolution and draft came not from the Allies but from the CDU/CSU, who were stung by the collaborationist accusation. As Adenauer had earlier feared, the SPD draft had also deleted several articles considered essential by the CDU/CSU and FDP. Meeting at Rhoendorf on April 21 to plot their next step, the CDU/CSU leaders were generally opposed to the short draft. However, most favored limited concessions in return for SPD support on the CDU/CSU finance proposals. Significantly, few of those present were willing to take responsibility for a final breakdown in the Parliamentary Council proceedings. The leaders agreed to meet with representatives of the other parties on the following day to seek once again some basis for compromise.<sup>36</sup>

On April 22, interfactional discussions were renewed in the Parliamentary Council. Walter Menzel, one of the chief architects of the SPD short draft, reassured other party leaders that the draft need not be accepted as a whole; it could be discussed article by article and a vote taken on each. With this explanation, the tense atmosphere relaxed somewhat and discussions continued.<sup>37</sup> At 6:45 P.M. the same

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<sup>35</sup>Monthly Report of the Military Governors, April 1949, p. 10.

<sup>36</sup>Daily Political Report, April 22, 1949, OMGUS, CAD, Box 254a, Folder 2.

<sup>37</sup>"Allies' Offer to Germans," Manchester Guardian, April 23, 1949, p. 1.

day, Hans Simons, the American liaison officer, suddenly appeared before the Council of Elders to deliver a further message from the Foreign Ministers.<sup>38</sup> Adenauer, Schmid and Schaefer were present to accept it. The Foreign Ministers let it be known that in the areas of finance and legislative priority, they would give "sympathetic consideration" to any recommendations which would, in effect, assure the independence of the Länder vis-a-vis the Federation. In the area of financial equalization, the Ministers would accept a method of grants-in-aid by which the more needy Länder could receive federal subsidies in the areas of health, education, and welfare, subject to approval by the Bundesrat.

Both Adenauer and Schmid saw in the message the basis for breaking the deadlock.<sup>39</sup> Over the weekend, April 23 and 24, the Main Committee met in almost continuous session in order to achieve a final compromise. Two additional subcommittees were established on the first day to find solutions to the issues of finance and powers of the Bundesrat. The problem of cultural and educational issues were raised by some CDU/CSU members, but the Committee leaders decided to postpone discussion in these areas until the finance and Bundesrat questions were resolved.<sup>40</sup> The SPD draft, although

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<sup>38</sup>For a text of the message, see DCGFC, p. 135.

<sup>39</sup>"Aussenminister geben Bonn neue Chance," Neue Zeitung, April 23, 1949, p. 1.

<sup>40</sup>"Bonner Fraktionen suchen gemeinsamen Basis," Neue Zeitung, April 24, 1949, p. 1.

not forgotten, was put aside by the SPD, which interpreted the Foreign Ministers' message as a concession to their point of view. With this obstacle removed, the parties were able to reach agreement on the issues dividing them and the Allies. On the subject of priority legislation, the Main Committee decided to give both the Federation and Länder concurrent legislative powers, whereby the Länder would have priority in all cases where the economic and legal uniformity of the Bund was not endangered. In the area of finance, tax sources were now more clearly defined and allocated between the Bund and the Länder; the administration of a particular tax would be carried out by the agency corresponding to the revenue source. In other words, if the Land was to be the beneficiary of a certain tax revenue, it would administer that tax within the Land. For financial equalization, it was agreed that the government would receive a portion of some of the Länder taxes to help it assist the poorer Länder. Some legislative powers of the Bundesrat were reduced, especially in the areas concerning nationalization of land, minerals, and means of production, but it still retained substantial parity with the Bundestag, particularly in the areas of finance.<sup>41</sup>

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<sup>41</sup>"Agreements at Bonn," Times (London), April 25, 1949, p. 4.

As the members of the Main Committee concluded their discussions, they drafted a statement that reflected the desire of most present to bring the Basic Law proceedings to a successful end.<sup>42</sup>

Based on a cooperation of many months, the members of the CDU/CSU, SPD, FDP, and Center factions of the Parliamentary Council, assembled in an interfactional meeting, have arrived at the conviction that they were solely guided in their decisions by German considerations and free from foreign influences. In the interests of the German people, they are willing to conclude successfully in loyal cooperation the task assigned to them which will decide the fate of Germany.

The scene of negotiations now shifted back to Frankfurt, as the delegation from the Parliamentary Council met once again with the Military Governors for the decisive conference on April 25. Both sides were hopeful that a final agreement would be reached before the end of the day. General Clay, on behalf of the Military Governors, opened the meeting by thanking the delegates for their new proposals. He requested that three minor changes be made in order for the proposals to be in complete agreement with the views of the Military Governors. The first concerned the concurrent legislative

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<sup>42</sup>Cited in the Monthly Report of the Military Governor, April 1949, p. 11. The KPD refused to sign the resolution because of the part that read "free from foreign influences," a point which they intended to exploit at a later time. The DP also did not participate because they felt that the compromises reached made the Basic Law much too liberal. Merkl, The Origin of the West German Republic, p. 125.

powers of the Länder, the second, the method of financial equalization between the Länder, and the last, the administration of taxes by the Länder. In the area of concurrent legislative powers, Clay felt that the definition of "uniformity," according to which the Länder could be denied powers of priority legislation, was too broad, and recommended a more precise terminology. For financial equalization, Clay once again recommended a grants-in-aid system to assist the poorer Länder. In the administration of taxes, he suggested that the power to regulate the raising of real estate and business taxes be retained by the Länder.

The delegates excused themselves for a short recess, after which Carlo Schmid responded on behalf of the Germans. The major point of disagreement was reduced to the area of financial equalization. The delegates once again recessed, this time for more than an hour. When the session reconvened, a final agreement was reached between the two groups, whereby Clay's recommendation was accepted. Clay then suggested that the Germans resolve any remaining disagreements among themselves. Since these issues involved the touchy questions of education and religion that had been postponed in the weekend negotiations, another lengthy pause ensued as these issues were resolved. Finally, the delegates emerged triumphantly in agreement. The meeting adjourned in a mood of quiet jubilation and relief. The delegates realized that the agreements reached during the meeting would have to be approved by the rest of the Council, but they had little

doubt that this could be accomplished; the delegation leaders felt that the Basic Law could be completed and approved no later than May 15.<sup>43</sup>

In a period of six days, the situation in Bonn had been completely reversed. As it turned out, the message of the Foreign Ministers marked the major turning point in the deliberations; for a short time, however, it was feared that the message would have the opposite effect. After the message of April 5, Adenauer had only reluctantly decided to seek a compromise with the Occupying Powers. His worst fears had been realized when the note of April 22 was delivered, and it did not take the press long to interpret its contents as a victory for the SPD. Kurt Schumacher himself had declared on April 23 that the Foreign Ministers' message was the "first big success of the decisive and clear actions of the SPD of April 20," to which Adenauer quickly responded that such an interpretation was hardly correct since the message had been written as early as April 7.<sup>44</sup> In the German Socialist newspaper, Die Zeit, the strategy of Schumacher was likened to a game of cards; the SPD had won the game. Whether

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<sup>43</sup>For a detailed report of the meeting, see FRUS, 1949, Vol. III, pp. 252-62.

<sup>44</sup>"Bonner Fraktionen suchen gemeinsamen Basis," Neue Zeitung, April 24, 1949, p. 1.

Schumacher had "shuffled the cards himself" was not known. The outcome, however, was undeniable: "a much needed plus point for Germany and the SPD."<sup>45</sup>

The magazine Der Spiegel concluded that the SPD had clearly outmaneuvered Adenauer and the CDU/CSU faction, while the venerable Times of London trumpeted that Schumacher had "won a notable victory."<sup>46</sup> Within the CDU/CSU faction there was considerable resentment about the delay in the delivery of the message, and a great deal of pressure on Adenauer to lead the faction into opposition.<sup>47</sup> To his credit, Adenauer put political considerations aside and managed to persuade his colleagues to do the same. He concentrated his efforts on incorporating the SPD proposals into the work which had already been accomplished, thereby minimizing the possible negative impact of the SPD recommendation.<sup>48</sup>

As for the SPD, the publicity surrounding the Foreign Ministers' note and the subsequent agreement with the Military Governors tended to gloss over the fact that all six of the

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<sup>45</sup>"Kurt Schumacher," Die Zeit (Hamburg), April 28, 1949, p. 2.

<sup>46</sup>"Acht Milliarden für den Bund," Der Spiegel, April 30, 1949, p. 3; "Progress in Germany," Times (London), April 26, 1949, p. 5.

<sup>47</sup>Ironically, one of the reasons Clay used to justify his delay in delivering the message was that it might goad the CDU/CSU into opposition. Clay Papers, II, Item 723, pp. 1121-22.

<sup>48</sup>Weymar, Konrad Adenauer, pp. 269-70.

conditions listed by the SPD on April 20 had not been fulfilled. The SPD short draft had not been approved (although the Basic Law draft had been reduced from some 180 articles to 140, the short draft had only around a hundred), the powers of the Bundesrat, although reduced, had not been eliminated, and the finance question had not been resolved entirely in favor of the SPD. Despite the discrepancies, the SPD had entered a pact with the other parties "to conclude successfully...the task assigned to them."<sup>49</sup>

Other factors may have influenced the final outcome. Rumors of the impending end to the Berlin Blockade had appeared with increasing frequency after April 14. The New York Times had reported on April 21 that authoritative sources in Washington had confirmed Soviet feelers regarding such an action, and the French Foreign Minister, Robert Schuman, confirmed the same in a widely publicized interview on April 22.<sup>50</sup> As in January, the overall effect may have been to speed up the process. It should also be noted that the Bonn deliberations had been underway for eight months, and it is conceivable that many delegates were extremely

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<sup>49</sup> Strauss maintains that not only did the SPD not get its way in these three areas, but in the other three the CDU/CSU were largely in agreement with them; therefore it was the CDU/CSU who came out ahead. "Die Arbeit des Parlamentarischen Rates," p. 166.

<sup>50</sup> "Capital Confirms Feelers on Berlin," NYT, April 21, 1949, p. 5; "Mr. Schuman on the Blockade," Times (London), April 23, 1949, p. 4.



anxious to bring them to a conclusion, regardless of the political loss or profit.<sup>51</sup>

Undeniably, personalities also played a significant role in the climactic negotiations of April 23 through 25. Adenauer had always been in favor of getting on with the task of establishing a West German state, regardless of the flawed condition of the constitution. He performed the very difficult job of holding his party together when he could easily have justified leading them into opposition. Even more crucial at this point, however, was the cooperation of Carlo Schmid. Perhaps the shrewdest tactician among the SPD leaders, and certainly the most engaging, he had bided his time at the SPD party congress at Hanover.<sup>52</sup> He allowed Schumacher his triumphant return to active politics, staying aloof from the bitter confrontation brought on by Reuter and Kaisen. Retaining Schumacher's confidence, he returned to the decisive negotiations of April 23-25. With the delivery of the April 22 note, he recognized his opportunity and exploited the favorable publicity to reach a compromise with the CDU/CSU and FDP. This view is supported by an

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<sup>51</sup>Public opinion seems to have played very little, if any, role in the proceedings. In a poll taken in March 1949, 40% of those questioned replied that they were indifferent to the future West German constitution. Elizabeth Noelle and Peter Neumann, The Germans, Public Opinion Polls 1947-1966 (Bonn: Verlag für Demoskopie, 1967), p. 227.

<sup>52</sup>Der Spiegel characterized Schmid as "der elastische Bulle aus Tübingen, der auf mehreren Klavieren mit einiger Bravour spielen oder sogar tanzen kann." March 12, 1949, p. 3.

American consul in Frankfurt, who, after an interview with Adenauer, submitted the following report to the State Department.<sup>53</sup>

Adenauer felt that an impartial examination of the compromises actually reached in Bonn would show that the SPD terms stipulated at Hanover on April 20 were met only in a very diluted sense. He was satisfied that, apart from the publicity aspect, the CDU had largely achieved its major objective....Needless to say, SPD leaders feel they have achieved a major tactical victory. Professor Carlo Schmid is credited with having masterfully utilized the vague wording of the Hanover stipulations in order to achieve his limited objectives in Bonn, at the same time allowing Hanover SPD headquarters to feel that its basic position had been achieved....Thus the rather unique political situation appears to have been attained in Western Germany where the leaders of both major parties feel they have achieved their basic objectives, and, as a result, are reasonably satisfied.

The agreement reached at Frankfurt had yet to be approved in a fourth reading by the full Main Committee. The draft would then be submitted to the plenary session for its second and third readings. While these sessions were not without a certain amount of drama, the compromise reached in Frankfurt marked a new determination by the leaders in Bonn to conclude their deliberations. This determination was reinforced by the official confirmation on April 26 by

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<sup>53</sup>Hillenbrand to Secretary of State, May 2, 1949, Department of State, Decimal File 1945-1949, 562.00/5-249.

the Soviets that negotiations were underway to end the Berlin Blockade.<sup>54</sup> Adenauer, interviewed on April 27, assured reporters that the Four Power discussions would not influence the work at Bonn but further declared that it was absolutely necessary that the Basic Law be completed before such discussions began.<sup>55</sup> The fourth reading for the Main Committee was scheduled for the first week in May, and the plenary sessions were tentatively set for May 11-14.<sup>56</sup>

Amidst the grumbling by the Bavarian CSU over the way in which the cultural and financial issues had been resolved, April came to a close for the Parliamentary Council. It had been a remarkable month, with moods among the delegates in Bonn ranging from despair and resignation at the beginning to hope and optimism at the end. With this insight into the events in Bonn during April, it is now necessary to turn to the Allies in order to examine how these events influenced their decisions, and in turn, how Allied decisions affected the course of the events in Bonn.

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<sup>54</sup>"U.S. Now Sees Way Clear to End the Berlin Blockade and Resume Peace Parleys," NYT, April 27, 1949, p. 1. In this article, James Reston recorded the surprise of many officials about the timing of the Soviet announcement. It was generally felt that had the announcement been made before the April 25 meeting, the Parliamentary Council would have been more inclined to await the conclusions of the Council of Foreign Ministers before committing themselves to the formation of a West German government.

<sup>55</sup>"German Parties and Basic Law," Times (London), April 28, 1949, p. 3.

<sup>56</sup>"Bonner Arbeit bleibt unbeeinflusst," Neue Zeitung, April 28, 1949, p. 1.

## II. The Western Allies, April 1949

In the previous chapter, it has been shown that British and American policy concerning the Basic Law coincided very closely going into the meeting of the three Foreign Ministers on April 1, 1949. That this convergence of views did not last long is a direct reflection of the tremendous influence which General Clay wielded on German policy matters. In the initial meeting between all three ministers on the afternoon of April 1, the basic positions of each concerning the Basic Law, trizonal fusion, and the Occupation Statute were discussed. On the last two subjects, the ministers agreed in principle that these documents, in contrast to the cumbersome and restrictive drafts thus far negotiated in London, should be radically shortened and simplified. On the subject of the Basic Law, Foreign Minister Bevin of Great Britain stated that the draft in its present form met the approval of the British cabinet. In contrast, Schuman expressed the French position that the present German counterproposals were not acceptable. The ministers agreed to discuss all three matters in greater detail on the following morning.<sup>57</sup> Another major topic of discussion was the Jessup-Malik conversations. Acheson was anxious to develop the situation further, and invited the comments of his colleagues as to the best way to proceed. Both Schuman and

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<sup>57</sup>FRUS, 1949, Vol. III, p. 161; Clay Papers, II, Item 702, pp. 1072-77.

Bevin expressed concern about the repercussions of a Council of Foreign Ministers on the progress in Bonn and urged that extreme caution be used in the event the Soviet feeler turned out to be some sort of propaganda move.<sup>58</sup> Bevin was particularly emphatic that the Soviets should be the ones to take the initiative in the matter. Based on previous experience, he recommended that the Soviets commit their position to writing. There was too much at stake in Europe to move precipitously. Eventually, it was agreed that Jessup should meet with Malik again to confirm whether the Soviet position coincided with their own (reciprocal lifting of the blockades in return for a meeting of the Council of Foreign Ministers; it was to be understood that progress toward the establishment of a West German government would be continued).<sup>59</sup>

On April 2 the ministers discussed the draft documents pertaining to the Occupation Statute and trizonal fusion. These documents were turned over to the respective diplomatic staffs for detailed analysis, and it was agreed to reconvene on Monday evening, April 4. During these initial discussions the Department of the Army had not been directly represented, but had been kept closely informed by State Department officials (except for the Jessup-Malik talks).

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<sup>58</sup>FRUS, 1949, Vol. III, pp. 709-12.

<sup>59</sup>Ibid., p. 716. Jessup's next meeting with Malik took place on April 5.

The Assistant Secretary of the Army, Tracy Voorhees, brought General Clay up to date in a teleconference on the afternoon of April 2. He informed Clay of the present State Department position regarding the Basic Law (that the U.S. should accept the Basic Law as amended by the proposal of March 17). Clay was clearly concerned by the news, replying that such action would represent a victory for Kurt Schumacher. "It makes him the greatest figure in Germany and repudiates CDU/CSU which has loyally stood by and which represents great majority in our zone. It accepts what I know to be a fact. British back-door promise to SPD and assures Socialist Germany." Voorhees assured him that his views had already been transmitted to Acheson and that he (Voorhees) would continue to emphasize the inadvisability of the State Department's position.<sup>60</sup>

It is likely that Clay's opinion was reiterated to the State Department prior to the meeting of the foreign ministers on the evening of April 4. Most of the day had been taken up with the ceremonies involved in the signing of the Atlantic Pact. From the course of the evening meeting, it is obvious that American policy toward the Basic Law had changed. It was here that the ministers agreed to send their first message to the Parliamentary Council (the message of April 5), encouraging the members to abide by the guidelines of the London Agreements. As has been noted, the message had an

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<sup>60</sup>Clay Papers, II, Item 702, pp. 1076-77.

effect opposite to the one intended.<sup>61</sup>

While the ministers were engaged in these activities on April 4, General Clay sent a message to Voorhees about the latest developments in the Parliamentary Council. Clay felt it was likely that the SPD would try to push through the approval of the March 17 proposals in the session of the Main Committee scheduled for the following day. If they were successful, and Clay had no doubt that they would be since the FDP had supported them on these issues in the past, he anticipated that the proposals would then be introduced in a plenary session. The SPD would again enjoy a majority. In Clay's eyes:

The danger in these developments is broader than the adoption or rejection of a satisfactory constitution. The danger is that we shall see the post-1919 developments repeated. The present fight is a test of strength between the SPD and CDU with the SPD willing to gamble the future of Germany to some extent upon its conviction that the March 17 draft will receive the approval of the Allied governments, and willing to put the CDU in the position of collaborators in order to weaken its future position.<sup>62</sup>

As Clay's advisers saw it, there were two possible dangers. If the CDU did vote against the March 17 version of the Basic

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<sup>61</sup>Records of the April 4 meeting are not available to the scholar. Based on the positions set forth by the three ministers in the meeting of April 1 and the positions subsequent to the meeting of April 4, it is clear that the British and French stood by their original positions. The U.S., most likely because of Clay's warning, was the one that changed its position.

<sup>62</sup>Clay Papers, II, Item 705, pp. 1085-87. As noted earlier, these fears were not realized, since the FDP, perhaps influenced by the note of April 5, unexpectedly changed sides and supported the CDU/CSU.

Law, and the Law was still approved by the Military Governors, the CDU would have to bear a double cross; the collaborationist stigma would remain, and the party would be viewed as politically inept for not having recognized that the Allies would give in in the end. On the other hand, if the Military Governors disapproved the March 17 draft, any future draft which was approved would be open to the charge of being a collaborationist document and lose its validity.<sup>63</sup>

On April 6, the foreign ministers met in a morning and an evening session. Regarding the Basic Law, the American policy shift which had been demonstrated on April 4 was further refined. A State Department memorandum outlined the approach to be taken during the meetings. While it was undesirable to abandon the long standing U.S. policy of a federal and decentralized government, strict adherence to the March 2 memorandum of the Military Governors was likewise to be avoided. A third option would provide more flexibility:

It would seem possible to work out provision that would express somewhat differently the principles of the Military Governors' comment which would save the face of the Socialist minority, allay their fears and yet assure in the constitution itself the perpetuation of a federal system, unless altered by the constitutional process of amendment.<sup>64</sup>

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<sup>63</sup>Ibid.

<sup>64</sup>Unsigned memorandum, "Present Status and Proposed Action as to Provisional Constitution for West Germany," April 6, 1949, Department of State, 740.00119 Control (Germany)4-649.



In the morning meeting, Foreign Minister Bevin was having second thoughts about the message sent the day before. In his opinion the Western Allies were being too intolerant of the present financial measures proposed by the Parliamentary Council. He expressed the hope that his colleagues would take a more liberal attitude toward the Basic Law in order to insure its ratification. Schuman was content to stand by the position taken on April 4.<sup>65</sup> By the evening meeting Acheson was convinced that unless some concession were made to the British, they might proceed unilaterally to support the March 17 draft.<sup>66</sup> To forestall this eventuality and to implement his own policy, Acheson proposed that additional instructions be sent to the Military Governors to give them more flexibility in dealing with the Parliamentary Council. To convince Bevin that outright acceptance of the Basic Law in its present form would not be the wisest course, he read portions of Clay's message of April 4. Essentially, Acheson proposed that the instructions sent to the Governors include a statement to the effect that modifications to the position taken by the Governors, yet still securing the financial independence of the Länder, would be sympathetically considered; this was likewise to hold true for issues dealing with priority and concurrent legislative powers of the Federation and Länder.

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<sup>65</sup>FRUS, 1949, Vol. III, p. 164.

<sup>66</sup>Clay Papers, II, Item 707, p. 1098.

On the following day Bevin suggested two additions to Acheson's proposals. Instead of intending the message for the sole use of the Military Governors, he recommended that the message be forwarded to the Parliamentary Council. A further instruction regarding financial equalization was also suggested, whereby the federal government would have the power to reapportion certain Land revenues with the approval of the Bundesrat.<sup>67</sup> In the end, the ministers agreed to a modified text of Bevin's proposal, whereby the Military Governors were given discretion on the exact timing of the delivery of the message, as long as it was done "before opinion in the Parliamentary Council has crystallized." The instruction on financial equalization was amended to allow the federal government to provide grants-in-aid to needy Länder for purposes of health, education, and welfare, subject to approval by the Bundesrat.<sup>68</sup> Acheson had temporarily achieved his objective: Bevin was mollified since the wording of the message was so ambiguous as to be interpreted as a victory for the Social Democrats, and the discretionary power given to the Military Governors would allow time for the interfactional struggle within the Council to be resolved

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<sup>67</sup>Ibid., p. 1095.

<sup>68</sup>The text of the message is contained in FRUS, 1949, Vol. III, p. 185.

before the message was delivered, thus pleasing Clay.<sup>69</sup>

Schuman was not convinced that the message would accomplish anything, but sided with Acheson. Unfortunately for Acheson, in trying to please both Bevin and Clay, he ended up pleasing neither. Ultimately, he was faced with the unpleasant task of supporting one over the other.

As a consequence of the April 7 meeting, two messages were transmitted to the Military Governors on April 8. One was the message to the Parliamentary Council of April 10, accompanied by the Occupation Statute. The second, to be delivered to the Parliamentary Council at the discretion of the Military Governors, became the message of April 22.<sup>70</sup>

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<sup>69</sup>The transcripts of the April 7 meeting are revealing. Acheson, referring to the timing of the message, said: "We should not now direct the Military Governors to give this information to the Germans....We should send it to the Military Governors for their guidance and transmission when the Germans come forward with some proposal or show some sign of action." Bevin's concern about insuring that the Basic Law was approved, and the motives for such concern, are reflected in the following: "Well, I just wanted to enter this caveat [that the Basic Law be approved in the end, regardless of its final form]. This is a big social question on our doorstep. And which we may get in very great conflict with factors at least in our Parliament. I want to be sure that when the Basic Law comes up to be approved, I don't want to conflict with my two colleagues then." Department of State, 740.00119 Control (Germany)/4-749TSF.

<sup>70</sup>FRUS, 1949, Vol. III, p. 172; for the message to Clay, see Clay Papers, II, Item 708, pp. 1100-01.

In the meantime, Jessup had met with Malik on April 5. Most of the meeting was taken up with the effort to define precisely the Western Allies' position regarding the establishment of a West German government. The Soviets were obviously concerned about the possibility that the West German government would come into existence during the course of the Council of Foreign Ministers. Jessup explained that while the Allies would not prevent this from happening, it was highly unlikely if the meeting was convened in the near future.<sup>71</sup> At the conclusion of the meeting Malik promised to relay the Allied position to his government.

Much had been accomplished at the meeting of the foreign ministers. Besides the signing of the Atlantic Pact, which did much to strengthen the hand of the French government domestically, the agreement reached on the simplified versions of the Occupation Statute and trizonal fusion was a significant achievement. Reaction within the Military Governments in Germany was generally favorable. The British were highly pleased with the results; as expected, they interpreted the ministers' second message as a concession to the SPD position.<sup>72</sup> The French reaction was muted, but there is little doubt that General Koenig was not as pleased

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<sup>71</sup>For a memorandum of the meeting, see FRUS, 1949, Vol. III, pp. 712-15.

<sup>72</sup>Clay Papers, II, Item 710, p. 1103.

as his other two colleagues. Yet with the signing of the Atlantic Pact and the concessions to French security interests in the Occupation Statute and the trizonal fusion agreement, he could hardly justify further delaying tactics in the establishment of the West German government.<sup>73</sup> Clay was quite satisfied with the outcome of the conference.<sup>74</sup> His only concern was over the ministers' second message to the Parliamentary Council, because its vague wording was bound to lead to differing interpretations among both the Germans and the Military Governors. He was determined not to deliver the message until the SPD had retreated from their position of March 30.<sup>75</sup>

In fact, Clay made this clear in an April 12 teleconference with Voorhees and Robert Murphy. Murphy suggested that private conversations with key German politicians might be in order to convince them of the urgency of coming to some kind of agreement. Clay was reluctant to do so, since the French and the British would be extremely suspicious of U.S.

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<sup>73</sup>Edward Litchfield, head of the OMGUS Civil Administration Division, wrote to Robert Murphy that "Koenig, as you might expect, is heart-broken and feels his government has completely let him down, but otherwise, everyone seems delighted." Letter of April 13, 1949, POLAD, Box 461, File 57.

<sup>74</sup>Clay Papers, II, Item 709, p. 1102.

<sup>75</sup>Ibid., Item 710, pp. 1102-03.

motives if they found out. During the conference, Clay informed them of Saintonge's statement about the British position vis-à-vis the Basic Law, an act hardly designed to improve matters with the SPD.<sup>76</sup>

The timing of the delivery of the Foreign Ministers' message was a major topic of discussion by the Military Governors prior to their meeting with the Parliamentary Council delegation on April 14. The political situation was still unclear since the SPD had postponed a final decision until the SPD Party Congress at Hanover on April 20. General Robertson proposed that the message be delivered in their meeting with the delegates later on that day. Both Clay and Koenig disagreed. Clay repeated his view that the message should be withheld until the Germans came forward with new proposals. Otherwise the Governors would be placed in the embarrassing position of appearing to capitulate to the SPD demands. Robertson reluctantly agreed to go along; the date of delivery remained open.<sup>77</sup> For the time being the Military

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<sup>76</sup>Murphy was not authorized to inform Clay of the Jessup-Malik talks. However, during the course of the conference he tried to warn Clay of the impending action by the Soviets: "For your personal and secret information, I fear a Soviet counter move unless the Germans act fast. This counter move would be in the field of political negotiation with the West designed to paralyze German initiative." Clay did not pick up the hint, as his later actions would demonstrate. Ibid., p. 1104.

<sup>77</sup>FRUS, 1949, Vol. III, pp. 239-40.

Governors were once again in agreement on how to proceed on the Basic Law.

On April 10, Philip Jessup had met with Yakov Malik in New York for the fourth time. Malik reported it was the understanding of Andrey Vyshinsky, the Soviet foreign minister, that the establishment of a West German government would not take place either before or during a Council of Foreign Ministers. Jessup patiently explained the Allied stand once again. The Allies would not postpone the formation of the West German government. The prospect of such an eventuality, however, would be quite remote during the next three months, since it would take at least that long to organize the government after the approval of the Basic Law. If the Council of Foreign Ministers occurred in the near future, the problem of a West German government would not arise. The meeting adjourned with neither side committing itself to a final position.<sup>78</sup> Two days later Jessup discussed the meeting with Acheson, and together they pondered the next step to be taken. Acheson felt that the Allied stance on the West German government should be reemphasized; however, he authorized Jessup to tell Malik that the preparations for its establishment would not preclude or contravene any agreement arrived at by the Four Powers on a government for all of Germany.<sup>79</sup> Jessup met with the British and French

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<sup>78</sup>Ibid., pp. 719-20.

<sup>79</sup>Ibid., p. 721.

ambassadors on April 13. While both agreed that the next steps with the Soviets should be taken as soon as possible, they were doubtful that approval by their respective foreign ministers for such steps would be forthcoming before Monday or Tuesday of the following week (April 18 and 19).<sup>80</sup>

In Germany, the impasse in the Parliamentary Council continued as Germans and Allies alike waited impatiently for the SPD meeting at Hanover. James Riddleberger, Murphy's replacement as Clay's State Department adviser, informed Murphy on April 18 that it was up to the British to bring the SPD around to the Allied viewpoint, "We very much hope that Robertson will have a serious conversation with him [Schumacher] before the party meeting on April 20," he wrote. "I still have my fingers crossed but am rather optimistic if the British bring pressure to bear that they should."<sup>81</sup>

At governmental level the British were applying pressure, but not of the kind hoped for by Riddleberger.

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<sup>80</sup>Bevin had departed by ship on April 12, Schuman on April 13. Since the next weekend was the Easter holiday, both ambassadors felt that the following Tuesday was the earliest to expect further instructions. Ibid., pp. 722-24.

<sup>81</sup>Ibid., pp. 243-44. Robertson did meet with leading SPD parliamentarians on 19 April, supposedly informing them that no British support could be expected on the demands for federal financial priority. Neue Zeitung, April 20, 1949, p. 1.



Foreign Minister Bevin wanted the message to the Parliamentary Council delivered before the Hanover meeting. His inquiry to the State Department was passed on to General Clay on April 19. Clay reminded State and his Army superiors that the timing of the message had been left to the discretion of the Military Governors. Since he and Koenig were still agreed not to deliver the message, he felt it should not be delivered at the present time, and in any event not until after the SPD meeting on April 20. Moreover, he was getting "damn tired of British backdooring of this whole issue."<sup>82</sup> In a more objective mood, Clay sent another message later in the day further justifying his action. He again explained the danger of "permitting any small group to make a success of defiance of the occupation authorities on an issue of major policy, particularly as it is done to gain popularity in the following election."<sup>83</sup>

Clay's refusal to deliver the message on April 19 drew a strongly worded British protest on April 20. It also resulted in British retaliation on another front. In an aide-memoire delivered to the State Department by the British Ambassador, Bevin in effect accused Acheson of a breach of faith. It was Bevin's understanding that the message was to

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<sup>82</sup>Clay Papers, II, Item 715, p. 1113.

<sup>83</sup>Ibid., Item 717, p. 1114.

have been delivered "without further delay." In any case, the view of the governments should certainly prevail over those of the Military Governors. He demanded that the message now be delivered on April 21, or at the latest on April 22, so that the Germans would have an opportunity to consider it before meeting with the Military Governors on April 25.<sup>84</sup> At the same time, Bevin sent instructions to his U.N. representative, Sir Alexander Cadogan, who was scheduled to meet with Jessup on April 20 to coordinate the next move with the Russians. It had been ten days since Jessup had met with Malik; both Acheson and Jessup were increasingly anxious to nail the Russians down to a firm negotiating position. Bevin informed Cadogan that he could agree to no further negotiations with the Soviets until the message of the foreign ministers was delivered in Bonn, and a "firm basis of agreement between the Military Governors and the Parliamentary Council" had been secured at the projected April 25 meeting.<sup>85</sup>

It is a testimonial to Clay's stature that the State Department deferred to his determination to withhold the Ministers' message on April 20. In a teleconference with Clay on that date, Robert Murphy emphasized that the British were exerting heavy pressure to deliver the note; Acheson himself was anxious that perhaps the time had come to do so.

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<sup>84</sup>FRUS, 1949, Vol. III, p. 245.

<sup>85</sup>Ibid., pp. 727-28.

Clay steadfastly refused to do so while the discretion remained his to exercise. If he was directed to deliver it, he of course would do so, but he would also request immediate retirement. Voorhees, who was present with Murphy, quickly reassured Clay that Murphy was only trying to acquaint him with "Acheson's thinking and anxiety about the subject."<sup>86</sup> While Clay was conferring with Washington, the first information on the SPD Congress was arriving. The SPD intent was not initially clear, although the language of the resolution was not encouraging. Until Clay was sure that the SPD's tone was conciliatory, he felt it was unwise to deliver the message.<sup>87</sup>

Bevin reacted to Clay's continued refusal to deliver the message with an even more sharply worded protest to the State Department on April 21. Explaining that he was "under great pressure in London on this matter," he urgently requested that Clay be ordered to deliver the message no later than

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<sup>86</sup>Clay Papers, II, Item 718, pp. 1115-19.

<sup>87</sup>Walter Dorn conferred with Clay for more than an hour on April 20, and recorded the following impressions: "He (Clay) is decidedly against presenting a new centralized policy. Whether centralism or federalism is right for Germany, he doesn't know. But federalism was a cornerstone of our policy, on which we built the entire military government. In the end we had drawn the French to our position--how could we change our line now?" Dorn, Inspektionsreisen, p. 170.

April 22.<sup>88</sup> Accordingly, Murphy and Voorhees again tried to persuade Clay on April 21 to deliver the message. Clay remained adamant; he was convinced that doing so would mean giving in to "the arrogance and defiance of Schumacher and make him the top hero in Germany for his defiance." Clay then added, "If you want that, go ahead. Don't ask me to do it." In desperation, Murphy explained that Acheson, like Bevin, had expected the message to be delivered within three or four days of its receipt by the Military Governors. He had deferred to Clay's judgment, but Bevin's repeated requests had put his reputation on the line. Trying to avoid giving Clay a direct order, Murphy then said: "I feel that your function and mine here is really carrying out a governmental agreement as our Secretary of State understands it." Clay replied that if that was an order, he would comply, adding once more that his compliance would be accompanied by his retirement. As before, Voorhees intervened to calm the situation. Clay finally agreed to contact Koenig; if Koenig were now willing to deliver the message, he (Clay) would go along. However, he felt that the Foreign Ministers' message was his trump card for the April 25 meeting. He had intended to use it to keep the French in line and to bring the Germans together if necessary.<sup>89</sup>

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<sup>88</sup>FRUS, 1949, Vol. III, pp. 247-48.

<sup>89</sup>Clay Papers, II, Item 723, pp. 1121-23; see also FRUS, 1949, Vol. III, p. 248.

On April 22, Clay was finally directed by Army Chief of Staff Omar Bradley to deliver the message. Even then the directive was politely worded: "Will you please make arrangements in concert with the other two Military Governors to present the Foreign Ministers' views at the earliest possible moment."<sup>90</sup> In acquiescing, Clay expressed doubt that he could represent the U.S. in good faith at the April 25 meeting. If it was now the U.S. position to accept the Basic Law in any form, he doubted that his presence would be necessary in any case. Voorhees and Bradley both urged him to stay on.<sup>91</sup>

To meet any exigency, the State Department dispatched Robert Murphy to Germany on the evening of April 22. His mission was to explain the State Department position to Clay in an attempt to persuade him to stay on. If he was unsuccessful, Murphy was to take Clay's place in the meeting with the Parliamentary Council on April 25.<sup>92</sup> Throughout the 24th,

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<sup>90</sup>Clay Papers, II, p. 1124.

<sup>91</sup>Ibid., Item 725, pp. 1125-28.

<sup>92</sup>After Clay was directed to deliver the message, a State Department note was sent to the American embassy in London with the following instructions: "The Secretary desires that you convey the following message orally to Mr. Bevin and in so doing discreetly to make the point that we would appreciate it if this message did not get relayed to Germany. The message follows: Quote. I should like Mr. Bevin to know that my understanding of the agreement of the Foreign Ministers on the last message regarding the German constitution does not differ from his, that we have not doubted that it should be carried out as made. I understand it is being

Murphy conferred with Clay, reassuring him that the State Department had not abandoned its German policy. He stressed, however, that it was of the utmost importance to bring about a prompt establishment of a West German government; some flexibility on the federalism issue would have to be used.<sup>93</sup> Grudgingly, Clay decided to see the process through to its conclusion, no doubt encouraged by the signs of cooperation emerging from Bonn.

The details of the April 25 meeting have already been recounted. According to Clay's account, General Robertson was ready to accept the German proposals of the past weekend with no additional changes. Koenig was willing to go along with whatever proposal was acceptable to the Americans. As Clay was the only governor desirous of changes, he carried the fate of the Basic Law in his hands. Predictably, he proceeded with the utmost tact and diplomacy, achieving the minimum corrections he felt necessary for Allied acceptance. He was also able to get the delegates to agree on the

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carried out today. End Quote. Secretary of State to American Embassy in London, April 22, 1949, Department of State, Decimal File 1945-49, 862.011/4-2249.

<sup>93</sup>Clay, in Decision in Germany, p. 433, records his puzzlement at Murphy's desire for haste: "I did not understand why our government was in such a hurry because I did not know of the Jessup-Malik negotiations." See also FRUS, 1949, Vol. III, pp. 251-52 for Murphy's account of the meeting.

remaining unresolved cultural issues before the meeting adjourned. General Robertson was justifiably proud when he announced to reporters after the meeting that "a rather historic day had ended"; he had a big story to tell them, "and indeed it is a pleasant one."<sup>94</sup>

Momentous events continued to unfold in the following days. On April 26, the Russians announced officially that talks were underway to lift the Berlin blockade. With the successful outcome of the April 25 meeting, Acheson was finally able to overcome Bevin's resistance to further meetings between Jessup and Malik. Jessup met with Malik on April 27, when the Soviets finally agreed to the Allied stipulation about the establishment of a West German government.<sup>95</sup> This obstacle now removed, the Russians were willing to come to an agreement on dates for the Council of Foreign Ministers and an agenda for the meeting. Final agreement, however, was not reached until May 4.<sup>96</sup>

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<sup>94</sup>"West Germany's Basic Law," Times (London), April 26, 1949, p. 3.

<sup>95</sup>FRUS, 1949, Vol. III, p. 734.

<sup>96</sup>Murphy relates that Clay first learned of the Jessup-Malik talks from "a British colleague"--presumably General Robertson--but mentions no date. The State Department allowed Murphy to inform Clay of the progress in the negotiations on April 27. Secretary of State, Telegram to Robert Murphy, April 27, 1949, POLAD, Box 36.

The blockade issue caused the French to raise an embarrassing point. Since a Council of Foreign Ministers might conceivably agree on a unified approach to Germany, should not the Western Allies announce at the time of their approval of the Basic Law that it would be subject to revision?<sup>97</sup> The United States managed to convince them that such an action would be most untimely and should be delayed at least until the Basic Law was submitted for formal ratification by the Länder.<sup>98</sup>

As the month of April ended, the prevailing attitude among the Allies was one of satisfaction. The deadlock on the Basic Law had been broken, and whatever the outcome of the future Council of Foreign Ministers, the Allies could always fall back on the reality of the soon-to-be established West German government. Before proceeding to the final deliberations of May, however, the question inevitably arises as to why the Allies reacted in the manner in which they did, allowing a final resolution to the Basic Law proceedings. As in the case of the Germans, personalities played a significant role. At the beginning of April, Acheson, Bevin, and even Schuman, to a certain extent, were willing to make concessions in order to bring about a successful conclusion to the Bonn deliberations. In this instance, General Clay seems to have

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<sup>97</sup>FRUS, 1949, Vol. III, pp. 262-63.

<sup>98</sup>Ibid.



played the pivotal role. He not only convinced the State Department to modify its policy on accepting the Basic Law, he also withheld the Foreign Ministers' message far beyond the time that Bevin and even Acheson considered prudent for its delivery. Several historians have faulted Clay for his motives, maintaining that it was his aversion to socialism and to Kurt Schumacher, in particular, rather than his professed federalist principles, that caused him to hold the message back.<sup>99</sup> Rather than attempt to narrow the field further, I think it is perhaps more accurate to say that all these reasons figured in his determination to withhold the message. His commitment to federalism was demonstrated as late as April 20, when he confided to Walter Dorn that federalism might not be the best course for Germany, but it was the principle on which U.S. policy in Germany had been based for four years. He opposed Schumacher and the Social Democrats for their ideology, but also because the nationalistic and exploitive overtones of their anti-Allied stance could only serve to undermine four years of occupation efforts to orient the Germans toward democracy.<sup>100</sup> If Clay had a weakness, it

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<sup>99</sup>Golay, The Founding of the Federal Republic of Germany, pp. 106-08; Gimble, The American Occupation of Germany, pp. 228-30; and Grabbe, "Die Deutsche-Alliierte Kontroverse um den Grundgesetzentwurf im Frühjahr 1949," p. 416.

<sup>100</sup>As Clay well knew, a similarly short-sighted approach by the SPD had contributed to the downfall of the Weimar Republic. The SPD maintained this stance long after the

was that he had too much integrity. The only factor which might have allowed him to take a slightly more flexible attitude, knowledge of the Jessup-Malik talks on Berlin, was never made available to him. Had he been aware of the crucial urgency behind the State Department's desire for haste in concluding the Bonn proceedings, it is conceivable that he would have acted differently.

A second question arises as to why Acheson tolerated Clay's behavior as long as he did. Clay had always enjoyed a large measure of independence as commander-in-chief and Military Governor, a reflection of the great respect for his judgment that his civilian and military superiors in Washington had. Such independence was also an operational necessity for a man who had to make instantaneous decisions on a wide range of complex occupation problems in order to prevent the whole system from collapsing. To refer everything to Washington was simply not practical.<sup>101</sup> Clay's influence in the State Department in March and April 1949 was no doubt given a vital assist when Robert Murphy was reassigned there beginning in March. Acheson took a calculated risk by sending the compromise message to the Military Governors; his ploy would have been successful had the political stalemate in Bonn resolved itself expeditiously, not an unrealistic

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formation of the government the following August, consistently characterizing Adenauer as "Kanzler der Alliierten." Not until the Bad Godesberg conference of November 1959 did this policy change substantially.

<sup>101</sup>Golay, The Founding of the Federal Republic of Germany, p. 98.

supposition considering the conciliatory nature of the Occupation Statute. As the pressure from Britain increased to deliver the message, Clay's explanation of the dire consequences of such a move, combined with his threat of retirement, prevented Acheson from acting until April 22. At that time, Acheson felt compelled to direct Clay to deliver the message, regardless of the consequences. Murphy, as the second most knowledgeable American on German affairs, was quickly dispatched to Germany just in case. Acheson's actions throughout these events should be viewed as those of a practical yet shrewd politician, willing to seek an amicable solution if possible, yet never losing sight of his ultimate objective.

At this point, it is instructive to explore what Acheson's ultimate objective actually was--the establishment of a West German government or the lifting of the Berlin blockade? From the preceding material, it would appear that Acheson's final decision to force Clay to deliver the message was predicated to some extent on his desire to maintain the initiative in the Jessup-Malik talks on Berlin. Only when the Basic Law issue was resolved would Bevin agree to further negotiations with the Soviets. There is a certain element of truth in this line of reasoning. However, there can be no doubt that the establishment of a West German state always had priority. It had been so pronounced in the London Agreement of June 1948 and reinforced in Murphy's policy statement

on Germany of March 23. In every meeting between Jessup and Malik over Berlin, Jessup had always emphasized that progress toward the establishment of a West German state would not be postponed by the lifting of the blockade or the convening of a Council of Foreign Ministers. This is not to say that the objective of lifting the blockade was not important. In his policy statement of March 23, Murphy had included a section on Berlin, summarizing the situation there very concisely:<sup>102</sup>

The continuation of the blockade with its attendant airlift represents a continued hazard in terms of the risks of serious incidents and possible resulting crises as well as a dangerous over-extension of air force resources susceptible to destruction in event of a surprise Soviet move. The airlift is as well an extremely costly exercise in terms of deterioration of air force material and, of course, in direct financial outlay. In summary, therefore, it may be stated that the lifting of the blockade still represents a major objective of the U.S. government.

Considering the importance of both the establishment of a West German government and the lifting of the blockade, Acheson cannot be faulted for moving almost simultaneously along parallel paths to resolve them.

That Great Britain was somewhat more cautious in its approach to a Berlin solution is also clear. This seems to be a reflection, not so much of Britain's lack of desire to end the blockade, but of its distrust of Soviet motives and its desire to finish the business in Bonn before Four Power

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<sup>102</sup>FRUS, 1949, Vol. III, p. 128.

negotiations had the chance of jeopardizing them. The Berlin blockade posed no less a threat to Britain (indeed, it presented more of one) than it did to the United States. Still, Bevin was adamant that the Soviets take the initiative in negotiations and that they commit themselves in writing to the course they proposed to follow over Berlin. An Allied initiative ran the risk of being exploited by the Soviets, and the results, in Bevin's eyes, could have disastrous consequences for Allied plans in Western Europe.

The Allies and the West Germans had been extremely fortunate in April 1949. Events, issues and personalities had all combined to refocus attention on the original goal of the London Program: the establishment of a West German government. After eight months of bickering and disagreement, both sides were once more committed to converting this objective into a reality.

## CHAPTER V

### I. Epilogue

The days following the April 25 meeting with the Military Governors were busy ones for the Germans. The three-man editorial committee of the Parliamentary Council worked feverishly to incorporate the agreements reached at Frankfurt into the final draft of the Basic Law. At the same time, party factions met to discuss the changes resulting from the meeting. The CSU, ever sensitive to criticism from the Bavarian Party, was especially concerned about the reduced powers of the Bundesrat and the new articles dealing with the cultural issues. Temporarily the delegation agreed to support the compromises reached at Frankfurt until the editorial committee produced the final wording of the draft. The Committee of Seven received the draft from the editorial committee on May 3 and forwarded it to the Main Committee with minor corrections on May 5.

By this time, the schedule agreed upon the week before (for submitting the draft to the plenary session between May 11-14) was moved up. On the morning of May 5, the press published the Allied communiqué announcing the lifting of the Berlin Blockade. The Soviets were to end the blockade on May 12 and the Council of Foreign Ministers were to meet

on May 23. To insure that the Basic Law would be approved prior to this date, Konrad Adenauer pressed successfully for speeding up the proceedings.<sup>1</sup> The Main Committee conducted the fourth reading of the draft on May 5-6. The KPD delegate, Max Reimann, attempted to postpone further consideration of the Basic Law draft until the results of the Council of Foreign Ministers were known, but was outvoted 20-1. On the afternoon of May 6, the plenary session was convened for the draft's second reading. The rules committee had already decided upon a streamlined procedure whereby debate on each article was to be limited and committee reports would not be allowed. Votes were taken on each article, with most articles receiving an overwhelming majority. The CSU delegation, as expected, abstained from voting on the articles dealing with finance and cultural rights. When the final vote was taken on the second reading draft version, the CSU

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<sup>1</sup>There were other reasons for the accelerated pace. Commenting in Berlin on the Allied communiqué, General Robertson told reporters on May 5 that the lifting of the blockade and resumption of Four Power talks would open the way to the "early establishment of a unified Germany." His remarks were initially misinterpreted in Bonn as an avowal of Britain's intention to scrap the West German state, and were shrewdly used by Adenauer to overcome the opposition of the CSU, Center, and FDP factions to a hasty conclusion to the proceedings; "Robertson favors Unified Germany," NYT, May 6, 1949, p. 3. Also, Carlo Schmid was in favor of a quick conclusion to the proceedings; an SPD board meeting was scheduled for May 10, and he was anxious to avoid further debate on the Basic Law if at all possible. Hans Simons, memorandum to Edward Litchfield, May 6, 1949, OMGUS, CAD, Box 458, Folder 1.

once again abstained, as did the DP and Center, and three delegates from the CDU. Prior to adjournment of the session, Adenauer announced that the third reading would take place on Sunday, May 8. The day's gap in the proceedings was granted in deference to the CSU delegation, which desired to consult with the CSU party leadership in Munich before taking a final stand on the Basic Law.<sup>2</sup>

The CSU found itself in an even worse political position than that of the previous October when the Bundesrat issue had been at stake. During the interfactional negotiations of April 22-24, the areas in which the Bundesrat had enjoyed equal powers with the Bundestag had been reduced from thirteen to six.<sup>3</sup> The financial and legislative powers of the Länder had been correspondingly increased, but not to the satisfaction of the CSU, which was convinced that only the Bundesrat could adequately protect the rights of the Länder. The manner in which the cultural issues had been resolved also left much to be desired. Against stiff SPD opposition, the CDU/CSU had been successful in including an article which gave parents the right to select the manner and method by which their children were to be taught religion in school.

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<sup>2</sup>A. Pabsch, "Highlight Summary of Parliamentary Council Actions," May 7, 1949, OMGUS, CAD, Box 466, Folder 3.

<sup>3</sup>Strauss, "Die Arbeit des Parlamentarischen Rates," p. 165.



The SPD had been able to exempt technical schools from any religious requirements, however, a situation which the devoutly Catholic CSU found unacceptable.<sup>4</sup> In a poll taken for the Munich newspaper Münchener Merkur on April 22, more than a third of the Bavarians questioned desired an independent Bavaria. The Bavarian Party was exploiting the constitutional issue to the hilt, threatening political upheaval if the CSU delegation voted for the Basic Law.<sup>5</sup> Unlike the preceding October, the CSU was not in a position to play the CDU off against the SPD. This time, both were anxious to complete the proceedings with no further delays. In order to maintain their base of power in Bavaria against the encroachments of the Bavarian Party, the CSU leaders chose the only practical alternative. They directed their Parliamentary Council delegation to vote against the Basic Law.<sup>6</sup>

On May 8, the fourth anniversary of the German capitulation, the plenary session of the Parliamentary Council conducted the third and final reading of the Basic Law. Shortly before midnight, it was approved by a vote of 53-12. Six out of the eight CSU delegates voted against it, along with the two delegates from each of the three smallest parties: the Center, the German, and the Communist. The two CSU

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<sup>4</sup>"Bonn Draft is Risked," NYT, May 5, 1949, p. 4.

<sup>5</sup>Müchler, CDU-CSU: Das Schwerige Bündnis, p. 48.

<sup>6</sup>"CSU besteht auf ihren 'grundsätzlichen Forderungen,'" Neue Zeitung, May 8, 1949, p. 2.

delegates who had voted in favor of the Basic Law were from Franconia in northern Bavaria, the least particularist area of Bavaria. The Center Party opposed the Basic Law for its failure to include the rigid religious guidelines that the party favored, while the German Party felt that the Basic Law was far too centralistic. The KPD opposed it also, continuing their obstructionist and negative role to the very end. Whether by coincidence or not, the 80% majority desired from the very first was obtained by one percentage point. Had the vote in favor been one less, the figure would not have been achieved.

The Basic Law approved on May 8 consisted of a preamble and 145 articles, dealing respectively with Basic Rights, the powers of the Federation and Länder, the Bundestag, the Bundesrat, the Federal President, the Federal Government, the legislation of the Federation, the execution of Federal Laws and Administration, the administration of justice, finance, and transitional provisions.<sup>7</sup> As directed by Document I of the Frankfurt Documents, the Basic Law, in its final form, did indeed establish a government of federal type which provided adequate authority, protected individual rights and freedoms, and guaranteed the independence of the Länder. Although it reflected the influence of the Allies in the area of finance, the Basic Law still managed to conform largely to

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<sup>7</sup>For a text of the Basic Law, see DCGFC, pp. 9-25.

German legal and constitutional tradition. The Weimar Constitution, updated by the Chiemsee draft, had served as a model for the German constitution makers, who had wisely added additional safeguards to insure that the experience of Weimar would not be repeated. Among these safeguards are a weakened office of the Federal President, the institution of the concept of the constructive vote of no confidence (where a new government must be chosen before the old government is dismissed), and a suspensive veto power of the Bundesrat (except in certain specified areas, such as finance).

On the major issues that had divided the parties since the completion of the Chiemsee draft, no one party seems to have emerged the clear victor. In the area of financial legislation and administration, the Allies imposed their concept of splitting both between the Federation and Länder, a solution that had been favored by no party. The SPD, it will be remembered, wanted the Federation to legislate and administer finances. The CDU/CSU supported federal legislation in the financial area, but administration at the Länder level. The distribution of revenues, divided as it was between the Federation and Länder, was the only portion of the financial section that was in general accord with the views of both the major parties. The CSU was able to achieve their objective of having a Bundesrat as the upper chamber in Parliament, but the SPD was able to insure that it did not enjoy equal powers with the Bundestag, and the FDP had

engineered the method of representation which reflected a compromise between equal and proportional representation. The weak federal presidency had been desired by the CDU/CSU and the SPD, although the latter would have preferred a präsidium in place of the presidency. Only the FDP's desire for a strong presidency was decisively rejected. Cultural issues reflected a compromise also. The CDU/CSU and Center managed to impose an article on the rights of parents to decide the type of religious training for their children, but the SPD and FDP had been successful in excluding non-denominational schools from having to provide religious instruction.

The work of the Parliamentary Council was not complete after the May 8 vote on the Basic Law. On May 10, the delegates voted to select a site for the new capital and to approve an electoral law by which the new government would come into being. Bonn was selected as the capital in a close vote of 33-29. The electoral law which was approved set the tone for future national elections; half the representatives to the Bundestag were to be directly elected and the other half to be selected by proportional representation.<sup>8</sup>

On May 12, the same day that the Berlin Blockade was lifted, the Military Governors gave their approval to the

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<sup>8</sup>For a text of the Electoral Law, see DCGFC, pp. 145-48.

Basic Law. Among the several reservations noted by the Governors in accepting the Law was a reminder that the powers of the Federation as delineated in the Basic Law were subject to the provisions of the Occupation Statute. Berlin was not to be accorded voting rights in the Bundestag or Bundesrat, although it could send representatives to those bodies; it was not to be governed by the Federation. In the concluding paragraph of the letter of approval, the Military Governors complimented the Parliamentary Council for their performance and noted that as soon as the Basic Law was officially promulgated, the Council would be dissolved.<sup>9</sup>

Adenauer's hope to have the Basic Law accepted by the Länder prior to the meeting of the Council of Foreign Ministers was also fulfilled. Between May 18-21, the Landtage in ten of the eleven West Zone Länder voted to accept the constitution. Only in Bavaria, where continued pressure by the Bavarian Party made it politically expedient not to approve the Basic Law, was it voted down. However, the Bavarian Landtag immediately followed the rejection by voting to have Bavaria abide by the Basic Law if it were ratified by two-thirds of the West Zone Länder.<sup>10</sup> On May 23, the day that the Council of Foreign Ministers opened in Paris, the Basic Law became

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<sup>9</sup>For a text of the Letter of Approval by the Military Governors, see *ibid.*, p. 138.

<sup>10</sup>For an explanation of this seemingly contradictory vote, see Merkl, The Origin of the West German Republic, pp. 148-61.

official, and the Parliamentary Council was dissolved.

The lifting of the Berlin Blockade and the convening of the Council of Foreign Ministers had come about as a result of the successful conclusion of the Jessup-Malik negotiations. Much to Acheson's dismay, the delivery of the Foreign Ministers' message on April 22 and the successful outcome of the April 25 meeting between the Military Governors and the German Parliamentary Council delegates had not immediately produced Bevin's approval to proceed with the Berlin talks. Bevin was still concerned that an Allied initiative would play into the Soviet hands, while Acheson held the opposite view, that lack of Allied initiative would do the same thing.<sup>11</sup> Jessup met with Malik again on April 27, at which time Malik agreed in principle to the Allied stipulations. At a subsequent meeting on April 29, further details were worked out, including the tentative dates for the lifting of the Blockade and the meeting of the Council of Foreign Ministers. A tentative agenda was also agreed upon; the Four Powers would discuss "questions relating to Germany, including the question of currency in Berlin."<sup>12</sup> On May 4, Jessup and Malik, now joined by the French and British representatives to the United Nations, reached a

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<sup>11</sup>FRUS, 1949, Vol. III, pp. 729-31.

<sup>12</sup>Ibid., p. 741.

final agreement. To the end, Bevin voiced his concern that the United States was rushing into a four power conference without adequate consideration of the consequences, particularly in Germany, where the new government had yet to be established, and in France, where the Atlantic Pact had not yet been ratified.<sup>13</sup>

Bevin need not have feared for either, for both the West German state and the Atlantic Pact became a reality soon after. The Council of Foreign Ministers, meeting in Paris from May 23 to June 20, failed to resolve any issues concerning Germany unity or access to Berlin, and in the end, the Four Powers decided simply to maintain the May 4 Agreement on Berlin reached by Jessup and Malik. Since this agreement provided merely for a return to the status quo ante of March 30, 1948, Berlin continued to provide the source of friction between East and West which Acheson had hoped so desperately to remove. Temporarily, however, both the Allies and the West Germans had good cause to feel more confident about the future. The Allies had finally managed to maneuver into place a piece crucial to the puzzle of Western Europe's recovery. The West Germans had overcome the first and most difficult obstacle on the road to regaining their sovereignty. For both sides, the next steps would not be as difficult.

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<sup>13</sup>Ibid., p. 750. The Atlantic Pact also had not been approved by the United States Congress. Not until July 25, 1949 was it ratified by the Americans.

## II. Conclusions

As the foregoing material suggests, the interaction of issues, personalities and events among the three levels involved in the Basic Law proceedings was tremendously complex. The Allies recognized that the establishment of a West German state politically and economically oriented to the West was a prerequisite for the recovery of Western Europe. Given the opportunity to establish such a state, the West Germans reluctantly concluded that the Allied offer represented an improvement over their present situation and contained the potential for leading to full unity and sovereignty. From the beginning, however, the Allied and German concepts of how the state should be constructed clashed and tended to obscure the ultimate objective of the Basic Law process. The French, ever sensitive to their security interests, wanted a federal system where the individual states dominated. The United States preferred to give the federal government adequate central authority, but were not willing to go as far as the British, who favored additional powers which would insure the government's ability to implement broad social measures. The Germans had their own ideas. The Bavarian dominated CSU wanted a strongly federalist system to insure Bavaria's influence in the government and to maintain their own position in Bavarian politics against the ultra-conservative Bavarian Party. The SPD, mindful of its goal of socialization, favored a government with adequate



financial authority to implement such a program. The CDU occupied a position somewhere in between these extremes, as did the relatively small FDP.

As the issues emerged, personalities and events combined to alter the initial positions taken at all levels. For the Germans, the two major party leaders, Konrad Adenauer of the CDU and Kurt Schumacher of the SPD, represented the opposite ends of tactical and strategic political viewpoints. Adenauer had a Rhinelander's appreciation for the international realities involved in establishing a West German state, especially where France was concerned. He was content to strike the best deal possible with the other parties over the constitutional structure of the state, while never losing sight of the ultimate objective of establishing the state itself. Schumacher took a more tactical approach to the problem. Convinced that the Allies would accept the SPD position in the end, he concentrated on insuring that the SPD concept of a centralized financial structure was incorporated into the Basic Law. Since this position conflicted with the Allied recommendations, it also won wide admiration among the German public, a fact of which Schumacher was well aware. It was left to Carlo Schmid, the SPD leader in the Parliamentary Council, to find a happy medium between Adenauer and Schumacher.

On the Allied side, Ernest Bevin was the most determined proponent of establishing a West German state among the three Allied foreign ministers. Without a West German state, all the Marshall Plan funds and plans for a Western European system of defense would be useless. Neither Acheson nor Schuman disagreed with this view, but both were somewhat more vulnerable to other considerations. With its worldwide responsibilities and severely stretched military resources, the United States could ill-afford the Berlin situation to erupt into an armed conflict. For this reason, Acheson considered the options in Germany very carefully before deciding to continue the London Program. The lifting of the blockade and the removal of Berlin as a point of friction between East and West remained high on the list of U.S. priorities. For Schuman, domestic considerations dictated a cautious approach to the London Program. By the time of the Foreign Ministers' conference in Washington, however, the domestic situation had improved significantly, allowing Schuman some flexibility in coming to an agreement with the U.S. and Britain over Germany.

Had this been the only level that the Germans had to deal with, the crisis of April might never have developed. The Allied Military Governors, however, vastly complicated the whole situation. Partly due to faulty or incomplete government directives and partly due to willful misrepresentation,

the Military Governors did not always accurately reflect the policy of their respective governments. For the British, this was a rare occurrence, since General Robertson consistently represented the views of his government. The French Governor, General Koenig, was a firm opponent of his government's German policy, placing subtle obstructions in the path of tripartite agreement over Germany. By April, however, the government's position had been strengthened to the point that Koenig was more or less forced to toe the line. General Clay, the American Governor, was committed to the principles of the London Program, especially regarding the construction of a federal system of government in West Germany. Normally cooperative as long as he was kept informed of the reasons for U.S. policy in Germany, he was not informed of the secret negotiations about Berlin, and thus in no great hurry to resolve the political stalemate in Bonn except on Allied terms. When the State Department adopted a more flexible attitude toward adopting the Basic Law, he opposed such a course, making resolution of the April crisis all the more difficult.

Throughout the proceedings, the situation in Berlin had exercised considerable influence, either directly or indirectly. Ironically, the blockade had the opposite effect from that intended by the Soviets. Hoping to prevent the formation of a separate German state, or at least discredit the West by driving them out of Berlin, the Soviets accomplished neither objective. The Allies realized from the start

that a withdrawal from Berlin would ruin their plans for Germany and Western Europe. Their resolve to stay in Berlin was substantially increased as the airlift demonstrated its potential and the West Berliners themselves resisted magnificently all forms of Soviet intimidation. Nevertheless, the Allies continued to run the risk of war as long as the blockade existed; they remained alert to any solution which would enable them to end the blockade while still carrying through their plans for West Germany.

The Germans were sensitive to the implications of Berlin also. Ernst Reuter, mayor of Berlin, had been instrumental in convincing the Minister Presidents to accept the London Documents by assuring them that such a move would help rather than hurt Berlin. As the blockade progressed, the airlift became the first visible proof to many West Germans that the West was concerned for their future. The West German public began to view their occupiers in a different light.

In April 1949, the firm stance of Kurt Schumacher over the issue of the structure of the federal government, precipitated by Allied intervention and exacerbated by the equally determined opposition of the CDU/CSU, brought on the crisis which almost proved fatal to the proceedings. The Allied Foreign Ministers stood helplessly by as General Clay resisted all attempts to persuade him to deliver the conciliatory note of the Ministers. Finally, Bevin's refusal to proceed further in the Berlin negotiations, combined with Acheson's

own desire to break the deadlock in Bonn and resolve the Berlin situation, caused Acheson to overcome his reluctance to force Clay's hand. The message delivered, the moderates in the Council, Schmid and Adenauer, went to work to achieve a workable compromise. Both sides made concessions, which Adenauer reationalized by claiming the CDU had gotten substantially what it wanted, and which Schmid rationalized by pointing to the news reports publicizing the victory of the SPD. Whatever the rationale, the compromise virtually assured the approval of the Basic Law by the remainder of the Council.

With this detailed insight into the events of April, it is possible to draw certain conclusions which differ from earlier accounts of the Basic Law proceedings. The British Military Government, for example, was indeed guilty of "back-dooring" information to the SPD which no doubt contributed to its position in April. The actions of the British liaison officer, Chaput de Saintonge, are a clear illustration of this, and no doubt more examples will emerge as scholars wade through the British diplomatic archives. The British government as a whole was more supportive of the SPD than many historians give them credit for.<sup>14</sup> That this is true

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<sup>14</sup>For example, Golay, The Founding of the Federal Republic of Germany, p. 100; Edinger, Kurt Schumacher, p. 177; and Schwarz, Vom Reich zur Bundesrepublik, pp. 163-64.

is demonstrated by the statements of Bevin at the Washington Foreign Ministers' meeting in support of the SPD position, and his later pressure on Acheson to have Clay release the message of April 22.

A second area dealt with extensively by historians is the role of General Clay in the proceedings. As noted previously, several historians have questioned Clay's integrity in dealing with the April crisis. Given U.S. policy in Germany between 1945 and 1949, Clay's own federalist principles, and his antipathy to both socialism and Kurt Schumacher, it is small wonder that he reacted in the manner in which he did. What is truly incomprehensible is Acheson's reluctance to inform him of the Jessup-Malik talks; such information would have underscored the urgency of resolving the stalemate in Bonn and might have provided the justification for Clay to bend his principles slightly to insure the achievement of a West German state.

A third area of interest during the month of April involves the political relationship between the German parties and between the individual German politicians. Peter Merkl has contended that the results in Bonn were due entirely to the work of strongly disciplined parties, a statement that is hardly consistent with the material above.<sup>15</sup> The parties

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<sup>15</sup>Merkl, The Origin of the West German Republic, p. 55.

were not highly organized at this time and even within the Social Democratic Party there were periodic rifts which belied Clay's perception that Schumacher pulled all the strings from Hanover. Merkl's contention that the FDP's realignment in early April was the essential factor causing the SPD to back down from its demands has already been pointed out and is equally difficult to sustain.<sup>16</sup> To achieve the desired large majority in the Council and the two-thirds majority in the Länder for approval of the Basic Law, the cooperation of the two major parties was required; an alignment of the FDP with either party would not produce the necessary majority. This is not to say that the FDP did not wield a considerable amount of influence and had no role in persuading the SPD to change its position in the end. Far more important, however, in the resolution of the final crisis was the delivery of the message of April 22 which allowed Carlo Schmid to make concessions without the party losing face. It should be stressed that both major parties made substantial concessions. Nevertheless, had the SPD not been given the appearance of having won a great victory, it is doubtful that the final compromise would have been acceptable to the party headquarters in Hanover.

With the promulgation of the Basic Law on May 23, 1949, a very crucial step toward Western European and West German

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<sup>16</sup>Ibid., pp. 99-102.

recovery had been taken. The resolution of the crisis in the Parliamentary Council in April demonstrated that the Allies and the West Germans alike were finally committed to the accomplishment of such a goal. The West Germany and Western Europe of today are the monuments to their efforts.



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